KASHMIR

MILITANCY AND HUMAN RIGHTS

M. K. TENG
C.L. GADOO



The obligation of the protection of human rights on regimes other than states, is as absolute as the obligation on the states is. The scope of the obligations arising out of human rights jurisdiction extends to all regimes, including regimes of social control, regimes which exercise power other than state-power, foreign states and international organisations, including terrorist regimes organised as a part of international terrorism.

The present study has been undertaken to assess the role of the terrorist regimes in the violation of human rights in Jammu and Kashmir. The war of attrition launched in Jammu and Kashmir in 1990, by various terrorist regimes, organised in Pakistan and the territories of Jammu and Kashmir occupied by Pakistan, has been placed in its historical perspective. An attempt has been made to examine the ideological commitments of the different militant organisations to analyse their irreconcilability with the human rights jurisdiction created by the Universal Declaration of Human Rights and the United Nations Covenants on Human Rights. A part of the study has been devoted to the mass-killing and extermination of ethnic minorities and sub-cultural groups and their exodus from Kashmir and the parts of the Jammu province where militant violence was inducted.

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Preface

The Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948, and the United Nations Covenants adopted by the General Assembly in 1966, impose obligations on all people and all organs of the society besides the states and their instruments of authority to uphold human rights and desist from action which violates them. The obligations imposed on people in general, underline the acceptance of individual responsibility. Human Rights do not only envisage safeguards against arbitrary and excessive exercise of state power; human rights ensure safeguards against the infringement of rights of man by any people, any organs of the society and institutions of the State. Individual responsibility is crucial to the entire content of the Universal Declaration of Human Rights and the United Nations Covenants on Human Rights.

The Human Rights movement suffered distortions under the impact of the Cold War and a new jurisdiction, confined to the responsibility of the state and the exercise of its authority, was created in contravention of the principles of individual responsibility, the human rights jurisdiction underlines. Over the years, the human rights movement, restricted the obligations arising out of the human rights jurisdiction to the authority of the state.

The obligation of the protection of human rights on regimes other than states, is as absolute as the obligation on the states is the scope of the obligations arising out of human rights jurisdiction extends to all regimes, including regimes of social control, regimes which exercise power other than state-power, foreign states and international organisa-

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An attempt has also been made to evaluate the forms of administrative action undertaken by the Government of India and the Government of Jammu and Kashmir to deal with the terrorist violence. The whole question of state action has been examined in the context of the United Nations General Assembly and Security Council resolutions, envisaging principles of legitimate police action to deal with international terrorism.

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Chapter I

JAMMU AND KASHMIR

The British colonial empire in India was divided into two separate and different political organisations, the British India constituted of the British Indian Provinces and the India of the Princes. The British India was directly governed by the British Government through the Governor General of India, with each of the Provinces in charge of a Provincial Governor, who in the old British tradition, administered the Provinces, with the help of the Indian Civil Service. The Princely States were ruled by local potentates, who had carved their independent fiefs and kingdoms in the long and atrocious process of the British expansion in India. Five hundred and sixty-two in number, the Indian States formed a conglomerate of widely disparate identities in their territories, population and government. The Princes were British feudatories, who accepted the supremacy of the British Crown, which was symbolised in the person of the Crown Prince, or the Viceroy of India. The relations between the British Crown and the States were governed by what the British called, the "Paramountcy". Paramountcy in real terms, described the extent of the authority, the British exercised over the States.[1]

Apparently, the rulers of the States were vested with the powers to rule their States, but in actual practice, the States were administered by the British officers, whose functions were determined by the Viceroy, the Political Department of the Government of India and the British Residents posted in the States. The Princes represented the best of the oriental splendour, with their treasuries held by the British, and their privy purses plentifully provided.

Throughout the long decades, the Indian national movement evolved, the Congress leadership, remained divided on the anti-

imperialist struggle in the States and the All-India Congress Committee did not formalise its opinion on the States till the Udaipur session of the All-India States People's Conference held in 1946. By that time, however, much precious time had been lost. The States had almost been isolated from the mainstream of the national movement and stood vulnerably exposed to the machinations of the British, the Muslim League and the Princes to Balkanise India.[2]

The Muslim League policy on the States was more involved and shifting, which concealed the designs of the League to grab the Muslim ruled Hindu majority States as well as the Muslim majority States for the separate Muslim State of Pakistan, the League demanded for the Muslims in India. The All-India States Muslim League, an appendage of the Muslim League, constituted to co-ordinate the Muslim movements for Pakistan in the States, demanded in 1940, the integration of all such Indian States in the Muslim homeland of Pakistan as were ruled by the Muslim rulers as well as all such States as were inhabited by Muslim majorities. The Lahore Resolution of the League, claimed a separate homeland for the Muslims in India, which was constituted of the Muslim majority Provinces of Sindh, the Punjab, Bengal, North-West Frontier, the Chief Commissioner's Province of Bluchistan, the Hindu majority Province of Assam, and the Princely States which were either ruled by the Muslim rulers or populated by Muslim majorities.[3]

The Congress awoke to the dangerous consequences of the isolation of the States almost after it had virtually accepted the partition, when it realised that the British, in collaboration with the Muslim League, were conspiring to break up India into several imbecile political entities with the Muslim State of Pakistan strategically placed at their epicentre. That was precisely what Jinnah, Conrad Corfield, and the Political Department of the Government of India visualised as the future constitutional composition of India. The Cabinet Mission Plan also, by and large, envisaged the division of India into several political identities which were confined within the territorial jurisdiction of a united Indian Dominion. The Cabinet Mission, precisely accepted the separate identity of the Princely States and rejected any opposition to transfer the paramountcy to the federal government. The Mission insisted upon the agreements between the federal authority and the

Princely States, as a basis for any future relations between the States and the Indian Union which would follow their accession and withdrawl of the Paramountcy.

At the time, when the British and the Muslim League settled down to decide the fate of India, the Congress turned to the people in the States, whom they had neglected throughout the long history of the Indian struggle against the British. Once again the Congress leaders fell prey to their own indecision and made a half hearted plea for the right of the people of the States to determine their future. Not backed by conviction, the Congress demand made little impression upon the British and the League. The Princes were disparaged and opposed the right of the people in the States to determine their future.[4] The League leaders turned the bend at the most appropriate time and in an astute move, pledged their support to the British designs to exclude the States from the constitutional arrangements envisaged by the partition and the withdrawal of the Paramountcy, to restore to the Princes, the powers which the British Crown exercised over them. The Muslim League realised that most of the States were populated by Hindu majorities and any arrangements to transfer Paramountcy to the two Dominions, would definitely place them in India, After the lapse of the Paramountcy the Muslim League shared the optimism of the British about the independence of the States and their eventual alignment with the Muslim State of Pakistan, as a counterweight against India.

The Congress resolve, having been broken by the partition and the Congress leaders, still groping for a new rationale of the Indian freedom, after their basic commitment to the unity of India was abandoned, did not stick to their demand for the right of the State's people to determine the future disposition of the States. Instead they acquiesced, without demur, within the British proposals to terminate the Paramountcy and restore the Princes the powers to decide their future affiliations with the two successor Dominions of India and Pakistan. The States were thus removed from the agenda of the Indian partition on the insistence of the British, the machinations of the Muslim League as well as the unconditional acceptance of the lapse of the Paramountcy by the Congress.[5]

The British divided India, separating the contiguous Muslim majority Provinces and divisions to constitute the State of Pakistan and left the Indian States intact, restoring to their rulers, the powers which they exercised by virtue of the Paramountcy. The Indian States were not brought within the scope of the partition and with the lapse of the Paramountcy, their rulers were accorded technical independence to determine the future affiliation of their States. The last Viceroy, Lord Louis Mountbatten, who was entrusted with the task of dividing India, insisted upon the application of the partition to the States, and he told the Princes in unequivocal terms to accede to either of the two Dominions of India and Pakistan, keeping in view the geographical contiguity and the demographic composition of their States.[6] The British had vital interests, political as well as strategic, in the Muslim crescent, which spread from Sindh, stretching along to Sinkiang, on the western fringes of China. Jammu and Kashmir State was the most vital link in the Muslim crescent, which the British, after they had withdrawn from India, would depend upon, for the protection of their interests in Asia and the security of their maritime commitments in the waterways of the Gulf, the Indian Ocean and the high seas opening into the South Pacific.

The League rejected the extension of the partition of India to the States, lest the Muslim ruled States with Hindu majorities, were lost. Indeed, the Muslim rulers had lavishly funded the League movement for Pakistan and the League won the referendum in the North-West Frontier Province with the help of the huge funds, the Muslim rulers of Hyderabed, Bhopal, Junagarh and Rampur made available to the League leaders. The League leaders insisted upon the acceptance of the lapse of Paramountcy and the rights of the rulers to accede to the Dominion they considered to be in their interests.[7]

The Indian National Congress too, rejected the application of the partition to the States, but demanded that the people in the Princely States, a quarter of the total Indian population, inhabiting one-third of the territories of India, be assured the right to determine the affiliations of their States. Few Muslim States fell within the geographical boundaries of Pakistan and the major State of Jammu and Kashmir, was

situated on the borderland of both the Dominions. All the other Indian States were Hindu-majority States. In the Jammu and Kashmir State, the Hindus and the other minorities, which formed a quarter of the population of the State and the Kashmir-speaking Muslim, who formed more than half the Muslim population of the State, were opposed to the League demand for Pakistan and had fought side by side with the All-India States Peoples Conference for the independence of a united India. States, including the Muslim ruled States and the majority of the people in the Jammu and Kashmiri State, would vote to join India. The inclusion of the Jammu and Kashmir State in the Indian Dominion, the Congress leaders anticipated, would lessen the rigours of the communal divide, the partition had caused and go a long way to consolidate the secular political organisations, India had opted for.

The British did not concede to the people of the States the right to determine their future, and instead restored the Paramountcy to the Princes vesting them with the power to determine the future disposition of their States. The British Government, made it clear to them that they would not be admitted to the British Commonwealth as British Dominions. The Viceroy, however, assured them that the British Government would consider any offer of bilateral relations, the States made, perhaps leaving open the options for any State to seek British protection to remain out of India. By the time the British quit India, all the Indian States except Junagarh, Hyderabed and Jammu and Kashmir, acceded to India. The few Muslim States within Pakistan and the Hindu majority State of Junagarh acceded to Pakistan. The accession of Junagarh was shortlived, the people in the State revolted and the Nawab had to flee to Pakistan with fabulous treasures and his vast seralgio. A referendum upturned the decision of the Nawab and Junagarh joined India.

Right after the British withdrawal, Pakistan claimed the Jammu and Kashmir State on the basis of the Muslim majority character of its population and its contiguity to Pakistan, though the League leaders recognised the right of the Princes to determine the future affiliations of their States. In the initial phases after independence, Pakistan with an eye on the Muslim-ruled States of Hyderabad and Junagarh,

conveyed to the ruler of the Jammu and Kashmir State, Maharaja Hari Singh, that the Government of Pakistan would support him if his State assumed independence. The All Jammu and Kashmir Muslim Conference, which led the Muslim movement for Pakistan in the State, apparently on the instructions of the Muslim League, openly declared its support for an independent Jammu and Kashmir State.[8] However, immediately after the Maharaja concluded a Standstill Agreement with Pakistan, the Government of Pakistan changed its tone and mounted pressure on the Maharaja to accede to Pakistan.

Maharaja Hari Singh offered a Standstill Agreement to the Government of India as well, but the Government of India refused to countenance any proposals of a Standstill Agreement, so long the State Government would not send its accredited representatives to the Indian capital to negotiate the terms of the agreement. Hari Singh probably, weighed down by the changes the British withdrawal had brought about in India and unsure of the consequences of his accession to India, waited, perhaps to seek political balances, which could retain him a measure of the prerogative he had enjoyed under the Paramountcy.

As time went by, Pakistan prepared feverishly to reduce the State and the Maharaja was not unaware of what was happening around. Pakistan fomented a rebellion in the Muslim majority districts of the Jammu province against the State Government, in which thousands of Hindus and Sikhs were killed and upturned from their homes. Neither Hari Singh nor the Indian leaders, who claimed their commitment to secularism and on that basis claimed the accession of the Muslim majority State of Jammu and Kashmir to India, paid any heed to the depredations, Pakistan spread in the State. Perhaps, the Indian leaders were still frightened of the British and therefore, balanced their interests in Hyderabad, where the Nawab, clandestinely, sought to seek help from Pakistan to remain out of India. The Indian leaders lacked the courage to face the Nawab and the leaders of Pakistan while their British benefactors had not gone very far.

Towards the beginning of September, Pakistan, army and nationals began to nibble at the borders of the State. By the end of September, they infiltrated into the sensitive border areas of the State to soften its defences. During the night of 21 October 1947, thousands of Pakistani

army personnel, disguised as local Muslim along with Afiridi tribesmen, invaded the State.[9] As the invading armies spread into the State, Hari Singh acceded to India. On 27 October, air-borne Indian troops arrived in Srinagar in the morning. Hari Singh transferred the state power to the National Conference two days after.

Though the British had withdrawn from India they still cast their shadow on the Indian freedom. In spite of the accession of the State of India and the military operations India launched against the invading armies, Pakistan triumphed. The intervention of the United Nations, which India invoked against the aggression of Pakistan, ultimately led to a cease fire in hostilities leaving a large part of the State, including the districts of Mirpur and part of Poonch with the Poonch Jagir in the Jammu Province, the district of Muzzafarabad and a part of the district of Baramulla in the Kashmir Province, and the entire district of Baltistan, the district of Gilgit and the Gilgit Agency, with all the Dardic dependencies, under the occupation of Pakistan.

Had the Government of India resisted the pressure to allow Pakistan to occupy a part of the territories of the State, Pakistan would have been denied the base, inside the State, which it affectively used to deepen the uncertainity, the cease-fire had created, and destablize the Indian positions in the State.

II
INTERIM GOVERNMENT

The transfer of power to the National Conference led to the institution of an Emergency Administration to help the State Government to meet the emergency created by the invasion. In March 1948, the Emergency Administration was dissolved and replaced by an Interim Government which was vested with all the authority to conduct the administration of the State. The Interim Government was constituted by the National Conference and headed by Sheikh Mohammad Abdullah. The induction of the Interim Government virtually brought the autarchy of the Dogra rulers to its end. The Interim Government which ruled the State by ordinance for almost a decade, enforced Muslim precedence in the government, society and the economic organisation of the State.

The occupation of a large part of the State provided Pakistan logistic advantage in linking up its political interests in the State with the strategic interests of its Western allies to neutralise Soviet influence all along, from Afghanistan to the borders of China in Sinkiang. Ayangar, who represented India in the United Nations had little experience of diplomacy and lacked the courage to deal firmly with the Security Council. Sheikh Mohammad Abdullah who was specially deputed by Jawaharlal Nehru to argue for India in the Council, took pains to convince the Council of the sincerity with which India had come to the rescue of the Muslims in the State, to save them from the Muslims of Pakistan. Quoting scriptures, Sheikh Mohammad Abdullah, made strenuous efforts, to prove that he and the Muslims in the State were more Islamic than the Muslims of Pakistan and it was precisely for that the Indian Dominion had gone to their help to save them from Pakistan.

As Pakistan consolidated its hold on the occupied territories, it went back on its commitments on demiliterisation, to withdraw its troops from the occupied territories and claimed a parity in the deployment of the troops with the strength of the Indian army, which it was agreed would remain in the State for its defence. Pakistan insisted upon the retention of thirty thousand Muslim militia, which it claimed, had been raised in the occupied territories. The militia was actually a part of the regular force, which Pakistan had organised from the Muslim deserters of the Dogra army, Muslim ex-servicemen of Mirpur, Poonch and Sudhunti, who were demobilised from the British imperial troops after the end of the Second World War and the recruits from the adjoining districts of Pakistan, who had brought up the rear of the invasion into the State and tasted blood and booty in their adventure.

While Pakistan launched a propaganda campaign, charging India of having usurped the freedom of the Muslims in Kashmir and demanded a plebiscite to determine the future of the State, it entrenched itself in the occupied territories. A local government called 'Azad Kashmir Government' was established in the occupied territories, ostensibly to conduct their administration. The invading army had already wiped out the Hindus and the Sikhs from the occupied territories; around thirty thousand of them had been exterminated in the invasion and more than a hundred thousand, who had survived, had been thrown

back into Srinagar and Jammu. Incidently, it will be of interest to note that these displaced persons are still awaiting rehabilitation in the State, though Muslim refugees, from wherever they came into Kashmir, Sinkiang, Tibet or even Azad Kashmir, have been settled in Kashmir with hereditary State Subject rights.

In a short time, Pakistan converted the occupied territories into a citadel of Muslim crusade against India, dedicated to the liberation of the State from the Indian dominance and the unification of the Muslims in the State with their brotheren in Azad Kashmir, within the Muslim homeland of Pakistan. Pakistan adopted a multi-pronged Strategy to destroy the Indian support base in the State:

(i) reorganise the cadres of the Muslim Conference, who had supported the League demand for Pakistan and who had provided tactical support to the invading armies, along with the sections of Muslim bureaucracy and the Muslim middle class, which had opposed the accession of the State to India, into a widespread and powerful movement for the disengagement of the State from India;

(ii) establish a widespread network of its intelligence agencies in the State to coordinate the activities of the anti-India Muslim elements and organisations;

(iii) organise infiltration of pro-Pakistan cadres into the political organisations which supported accession of the State to India and sabotage these organisations from inside;

(iv) induct pro-Pakistan agents into the State Government to capture its decisional units;

(v) launch a propaganda campaign addressed to the Muslims in the State to organise them against India on the ground that:

   (a) Muslims in Pakistan and the Jammu and Kashmir were one nation imbibed by the spirit of Islam and since the Muslims in the State were a majority, the State rightfully formed a part of the Muslim homeland of Pakistan;

   (b) Pakistan was a Muslim State based upon the law and precept of Islam, which accepted the preeminence of the Muslims in its social, economic and political organisation;

(c) India was a Hindu nation and in India the Muslim majority in Kashmir would be subjugated to the dominance of Hindus;

(d) commitment to secularism was unIslamic because Muslims could not accept equality between the Muslims and the people who did not profess Islam;

(e) the National Conference which supported the accession of the State to India, aimed to divide the Muslims and weaken them;

(f) the Hindus in the State, particularly the Kashmiri Pandits, were ceaselessly working to consolidate the Indian forces in the State in order to perpetuate Hindu rule over the Muslims and it was therefore, necessary to isolate them socially as well as exclude them from the economic organisation of the State and the processes of its government and politics.[10]

Inside the State, the cadres of the Muslim Conference, who had been considerably subdued after the accession of the State to India, the volunteers of the Muslim Guard, who had been organised in both the provinces of Jammu and Kashmir during the fateful days which followed the transfer of power in India in 1947, the cadres of the smaller Muslim organisations, which supported the accession of the State to Pakistan, the Muslim intellectuals and middle class factions, including the sections of bureaucracy which opposed the accession of the State to India, and a section of the Muslim leaders and cadres of the National Conference, organised themselves into a closely, knit and widespread movement for the disengagement of the State from India and its merger with Pakistan. With active political support and enormous funds received from Pakistan, the Muslim movement against India, widened its reach rapidly.[11]

The claim to a separate Muslim nation which was not subject to the dominance of the Hindu majority in India, and which was committed to the ideas of the Muslim brotherhood and Islamic law, had a far reaching effect on the Muslims in the State. The Muslims could

achieve ascendance in a State which was Muslim in majority and outlook. The secular organisation of India, which underlined the equality of all people, irrespective of their religion, could not be reconciled to a Muslim state, which in principle accepted the pre-eminence of the Muslims in all social economic and political forms. In the Muslim homeland, Muslim precept would prevail over all other religions and social forms, which would be subject to Islamic law and injunctions. Since the United Nations had opened fresh options for the Muslims in the State in respect of its final disposition, the Muslims could repudiate accession to India and join the Muslim nation of Pakistan.

The response of the National Conference leaders to these events was pathetically sterile. The Conference leaders adopted, almost the same ideological propositions, which formed the basis of the Muslim separatist movements in the State. In due course of time, it became clear that the National Conference sought to create another Muslim State within India, outside the Indian political organisation. On several occasions, the Conference leaders, even went as far as to propose the creation of an independent State of Jammu and Kashmir, which would satisfy the aspirations of its people. A Muslim state, the Conference leaders believed would ensure the Muslims of Jammu and Kashmir, a political organisation which was based upon the Muslim majority character of its population, and the recognition the precedence of the Muslim majority in its government and society.[12]

The National Conference leaders, gave expression to their outlook when the issues pertaining to the constitutional position of the States came up for deliberation in the Constituent Assembly of India. The Instrument of Accession, executed by the acceding States had reserved the rulers, the right to convene Constituent Assemblies in their States to draw up the Constitution for their respective governments. Constituent Assemblies were convened in the Mysore State, the States Union of Saurashtra and the States Union of Travancore-Cochin.[13] In May 1949, the Premiers of the States took a stupendous decision and invested the Constituent Assembly of India with the authority to frame a uniform set of constitutional provisions for all the acceding States. The National Conference did not accept the decision of the Premiers conference. Consequently, a conference of the National Conference

leaders and the representatives of the Constituent Assembly of India was convened in Delhi in May 1949, to finalise the constitutional arrangements for Jammu and Kashmir. The Conference leaders stunned Nehru and his other colleagues when they told him that:

(i) muslims of Kashmir required to be ensured a separate and independent political organisation to protect them from the dominance of the Hindu majority in India;

(ii) the political organisation of the State could only be based upon Muslim religious precept and the precedence of the Muslim majority in the government of the State;

(iii) the Muslim nation of Kashmir had a separate identity which could not be merged into the national identity of India.[14]

The Indian leaders, disconcerted with the proposals the Conference leaders made, offered to leave a wide orbit of authority to the State Government in the federal division of Powers between the States and the Union of India. They also offered to agree to the institution of a separate Constituent Assembly of the State to frame a separate constitution for its government. But they proposed the inclusion of the State into a broad constitutional organisation of India, to bring it within the perview of the provisions of the Constitution of India in respect of the territorial jurisdiction of the Union, citizenship of India, fundamental rights and related legal guarantees, the federal judiciary and the powers pertaining to emergencies, elections and audit. The Conference leaders refused to accept the application of any provision of the Constitution of India to the Jammu and Kashmir and insisted upon the separate constitutional organisation of the State linked with Union of India by the stipulations of the Instrument of Accession. At one time, they broke off the negotiations and threatened to resign from the Constituent Assembly, in case they were forced to accept the application of any provision of the Constitution of India to the State.

Fearful of a crisis, the resignation of the Conference leaders from the Constituent Assembly would create and its repercussions in India and abroad, Nehru sent Ayyangar to Kashmir House in Delhi, where the Conference leaders had closed themselves, to convey to them

Nehru's assurance that he would accept their proposals as a basis for the future constitutional organisation of the State. Kashmir House was an old mansion built by Maharaja Hari Singh in the Indian capital.

Ayyangar did not realise the implications of accepting to create a separate state, independent of the constitutional organisation of India, on the territories of India, federated with the Union on the basis of the division of powers, confined to the stipulations of the Instrument of Accession. He met the Conference leaders and assured them that the Government of India would accept a constitutional position for Jammu and Kashmir outside the Indian constitutional organisation. He further assured them the Government of India respected the aspirations of the Muslims of the State and therefore, would accept the institution of a separate Constituent Assembly of the State which would frame the constitution of the State and also determine the future of the Dogra dynasty. The provisions of the Instrument of Accession, Ayyangar assured them further, would determine the constitutional relationship between the State and the Union of India.

Ayyangar drew up a fresh draft in consultation with Mirza Afzal Beg. Abdullah pulled the strings from behind the scene. The revised draft, prepared by Ayyangar and moved in the Constituent Assembly of India, envisaged that no provisions of the constitution of India would apply to the State and the division of powers between the Union and the Jammu and Kashmir State would be determined according to the stipulations of the Instrument of Accession. A separate Constituent Assembly would be convened in the State to draw up a constitution for its governance. The Constituent Assembly would be empowered to recommend to the President of India modifications in the operation of Article 370, which the latter would notify by a proclamation. Except that the Jammu and Kashmir was listed in Schedule I of the Indian Constitution, and thereby included in the territories of India, it was excluded completely from the Union and its political organisation.

The draft provisions were incorporated in Article 306-A of the draft Constitution of India. Draft Article 306-A, was renumbered Article 370 at the revision stage.

The draft Article 306-A was circulated in the Constituent Assembly on 16 October 1949. It came up for consideration of the Assembly

the next day. Several members of the Constituent Assembly detected an error in the draft provisions, which Ayyangar had overlooked. The draft Article defined the State Government as the "Council of Ministers appointed under the Maharaja's proclamation dated 5 March 1948." The members of the Constituent Assembly pointed out to Ayyangar that the definition of the State Government envisaged a perpetual Interim Government which would lead to the creation of an anomalous situation of excluding all successor governments from the provisions of the Constitution of India, Ayyangar modified the draft to remove the anomaly and redefined the State Government as the "person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in the office under the Maharaja's proclamation dated the fifth day of March 1948."

The Conference leaders took strong exception to the change in the definition of the State Government. Mirza Afzal Beg threatened to move an amendment to the draft provisions of Article 306-A, seeking to alter the definition of the State Government. Beg had actually sought to include provisions in the draft Article 306-A which envisaged a perpetual Interim Government in the State and which could be used as a lever against India in future. He and the other Conference leaders, were disconcerted with the inclusion of the State in the First Schedule of the Constitution of India as well and wanted a pretext to block the passage of the special provisions in the Constituent Assembly.

Ayyangar could not remodify the definition of the State Government, in view of strong reaction against it in the Constituent Assembly. He failed to persuade the Conference leaders to agree to the modifications he had brought about in the draft. When Article 306-A came up for the consideration of the Constituent Assembly, the Conference leaders sulked away and did not join the deliberations on the draft provisions, till Ayyangar completed his speech. They sat glum when the draft provisions were put to vote and passed unanimously.

Immediately after the draft provisions were adopted by the Constituent Assembly, the Conference leaders sent a sharp rejoinder to Ayyangar, demanding the recension of Article 306-A as adopted by the Constituent Assembly, failing which they threatened to resign from

its membership. Ayyangar was stunned. He sent a plaintive note to the Conference leaders entreating them not to take any action which would prejudice the Indian interests. The Conference leaders, did not resign from the Constituent Assembly, but as the days went by, they launched a surreptitious and widespread campaign to subvert the special provisions of Article 370.[14]

The Constituent Assembly of the State was convened in 1951, almost two years after the Indian constitution was framed. Since the provisions of the Constitution of India, were not applicable to the State, the Interim Government ruled by ordinance and decree. In the elections to the Constituent Assembly, seventy-three of the Conference nominees were returned to the Assembly unopposed. Two of the remaining seats in the seventy-five member Assembly were also annexed by the National Conference.

In his inaugural address, Sheikh Mohammad Abdullah claimed plenary powers for the Constituent Assembly to determine the final form of the constitutional relations between the State and the Indian Union, which virtually sought to subject the special provisions envisaged by Article 370 to the verdict of the Assembly. He went further and asserted that the Constituent Assembly, its powers drawn from the people of the State, would determine the future affiliations of the State in respect of its accession, in accordance with the options the Cabinet Mission Plan had reserved for the States. In categorical terms, he spelt out that the Constituent Assembly would determine whether the State would remain in India, accede to Pakistan or assume independence. The implications of his statement were clear. Article 370 would be rendered redundant after the Constituent Assembly had taken a final decision on the accession of the State and its constitutional relations with India.[16]

The National Conference leaders used the Indian State to defend Jammu and Kashmir from the invading armies of Pakistan in 1947. After that was accomplished, they sought to use the United Nations intervention to pull out the State from India. In August 1953, the Interim Government headed by Sheikh Mohammed Abdullah, was dismissed and a second Interim Government headed by Bakhshi Gulam Mohammad installed in its place.

In 1954, the limitations imposed upon the application of the Constitution of India to the State, were partially lifted by a Presidential proclamation, in respect of citizenship, fundamental rights, Government of India, division of powers, federal judiciary and elections to the Parliament. Subsequent proclamations extended more provisions of the Constitution of India to the State. The application of the provisions of the Constitution of India, however, were subject to reservations and exceptions, which mutilated their real content.[17]

III
THE PLEBISCITE FRONT

The Muslims denounced the dismissal of Sheikh Mohammad Abdullah and the dissolution of the Interim Government in 1953, and charged India of a conspiracy to deprive them of their right to determine the future disposition of the State in regard to its accession in accordance with the resolutions of the Security Council to which they claimed, both India as well as Pakistan were committed.

The Muslims triumphed again. The Indian leaders, who had applauded the National Conference as the harbinger of a new era of communal amity which transcended the narrow claims to Muslim irridenticism, the Muslim League had used to divide India, were defeated and face to face with a reality which was as harsh as the partition of India. The Muslims in the Jammu and Kashmir State demanded their right to secede from India and join Pakistan.

The entire pro-Pakistan Muslim underground which had refurbished its strength considerably, while uncertainty depended in the State, the cadres of the erstwhile Muslim Conference, the new Muslim middle class and the pro-Pakistan Muslim bureaucracy along with the dissident cadres of the National Conference who had opposed the accession of the State to India and broken away from the Conference earlier, joined the leaders and the cadres of the National Conference in their upsurge against the dissolution of the Interim Government. The vast network of the Pakistan's Intelligence agencies, which was by now entrenched deep in the State, provided political direction and material help to the Muslim movement.

The Hindus and the other minorities, all over the State, pledged their support to the Second Interim Government constituted of the remnants of the National Conference and headed by Bakhshi Ghulam Mohammad. While the Muslim supporters of the second Interim Government did not dare to come out of their homes, the Kashmiri Hindus took to the streets demonstrating their loyality to India and their support for the second Interim Government. The open defiance of the Hindus against the Muslim reaction, indeed, provided the foreground for the political initiative, the Second Interim Government took to combat the disruption and violence which followed the dissolution of the first Interim Government.

The patriotic zeal with which the Kashmiri Hindus fought back the mounting Muslim opposition to India, earned them nothing except the rancour and hostility of the rank and file of the National Conference which arranged itself behind the powerful pro-Pakistan Muslim underground factions. In fact, the Kashmiri Hindus were never forgiven ever after, for having risen in support of India against the will of the Muslims.

The Indian leaders had no alternative except to repudiate their commitment to a plebiscite in the State and they withdrew it ultimately. But they did not abandon the farce they played in Kashmir and like hapless puppets, acted to promote more vigorously the Muslimisation of the society and the government of the State. The Second Interim Government, after it had stabilised itself, began to consolidate its hold on the Muslim ranks of the National Conference by a more fervent policy of communal precedence which strung the Hindus, particularly in the Kashmir province, in a tighter noose. The left flanks of the National Conference, which accused Sheikh Mohammed Abdullah of having conspired with imperialism to secure the independence of the State and convert it into a hotbed of international intrigue, and which assumed much prominence in the power structure of the second Interim Government, supported all political action aimed to secure the communal precedence of the Muslim majority in the State. Many of the left ideologues, most of them claiming the intellectual tradition of Marxism, rationalised Muslim communal precedence by logical reductionism which virtually tantamounted to the identification of religious precedence with resurgence of the oppressed masses.

Pakistan, which had, during the tenure of the First Interim Government, spared no efforts to subvert the National Conference, and in which it has succeeded, put itself solidly behind the Muslim upsurge in the State, which followed the disintegration of the National Conference in 1953. The British were no longer the masters in India and the Security Council could not enforce the demand made by the Pakistan and the Muslims in the State for a second partition of India. No lessons were lost on Pakistan. Immediately after the Government of India gave the first formal expression to its decision to repudiate its commitment to a plebiscite, Mirza Afzal Beg founded the All Jammu and Kashmir Plebiscite Front. With the foundation of the plebiscite Front, now in a position to play the Muslim card more effectively, and no more frightened of the role National Conference could play in favour of India, the Government of Pakistan became more vociferous in demanding the implementation of the United Nations resolutions.

In 1955, the Government of India reversed its policy and formally repudiated its commitment to a plebiscite in Kashmir, which the United Nations had foisted on it in 1948.[18] Perhaps, Nehru had, in the long last realised that Pakistan had dragged the dispute over Kashmir into the cold war, and had, after having frustrated all attempts at demilitarisation for five long years, pushed India into a defensive position after the disintegration of the First Interim Government. Nehru had achieved little by invoking the United Nations intervention; instead, he had lost to Pakistan almost half of Jammu and Kashmir, including its strategic frontier in the north. Britain and America had brought Pakistan into the alliance system, which they had devised to ring fence Soviet Russia. Indian Prime Minister had begun to entertain fears that the uncertainity in the State would cause serious damage to the Indian position and prestige and any further procastination would provide a long handle to Pakistan to further its interests in Jammu and Kashmir, communalise the Muslim masses and destabilise the fragile political processes in the State, which the First Interim Government had already undermined by its dubious and separatist policies.

Pakistan supported the formation of the Front and extended support to the Front in its struggle against India. The Plebiscite Front committed itself to the demand for the right of self-determination of

the Muslims in the State and the implementation of the Security Council resolutions envisaging a plebiscite under the aegis of the United Nations.

The entire pro-Pakistan underground joined the Plebiscite Front. Backed by the network of the Pakistan's intelligence agencies, the Muslim bureaucracy and the Muslim middle class, the Front gathered widespread support among the Muslims in the Kashmir province as well as the Muslim majority districts of the Jammu province and the Muslim majority district of Kargil in Ladakh. The pattern of the Muslim movement in the State was almost identical to the Muslim League movement for Pakistan. The Muslims in the State demanded the dissolution of the accession of the State to India and its integration with Pakistan, because they formed a majority is Jammu and Kashmir within a dominantly Hindu India.

The main core of the Front leadership was constituted of the most virulent opponents of India—men who had not supported the decision of the National Conference in respect of the accession of the State to India and who had relentlessly worked to organise Muslim opinion against India, both inside the National Conference and outside it. Indeed, they played a major role in the fall of the First Interim Government and once the Conference was broken up, they did not require much effort to forge a front against India.

The Government of India, at least apparently, realised the danger in the secessionist movement, the Plebiscite Front and the other lesser Muslim organisations spearheaded. India had allowed its support bases in the State to be destroyed by the secessionist movements, Muslim majoritarianism and the policy of blackmail and intimidation, the successive State Government had followed. The psychological shock, the Chinese attack administered to the Indians, exposed the hollowness of the Indian claims to leadership roles, which discounted power balances as the basis of international relations. For Pakistan and the leaders of the secessionist movement in the State, the Chinese invasion was a development of considerable satisfaction. In fact, after the Chinese invasion the secessionist movement entered a new phase of its development. The leadership of the Plebiscite Front realised that India, which had always defied the initiative of Pakistan's western allies, was caught

in a pincer movement, between China and Pakistan. Careful to regain as much of the lost leverage as was possible under the circumstances, the Front leaders shifted their emphasis to a settlement between India and Pakistan, which would ensure the extraction of Jammu and Kashmir from India. This was what suited Pakistan the most.

The secessionist movement received fresh impetus in the wake of the Muslim agitation which followed the theft of the sacred relic from the Muslim shrine of Hazratbal in Srinagar. The secessionist forces dominated the religious effervescence the incident caused among the Muslims and used it to destroy the institutional structure the Interim Government had built and upturn the last vestiges of the Indian influence in the State. The Government of India, broken up in its resolve to face the situation, with whatever firmness it still possessed, manoeuvred to contain the impact of the agitation, but in the process abandoned its political initiative to deal with Muslim separatism, which had by now consolidated itself into a dangerous anti-India force.

Nehru initiated a dialogue with Sheikh Mohammad Abdullah after the latter was released in 1964. Reportedly, Nehru offered the Front leaders to recognise Jammu and Kashmir as an autonomous Muslim State in India and abrogate the changes in Article 370, which had been brought about after 1953. Sheikh Mohammad Abdullah rejected the offer Nehru made, and refused to accept any proposal which left out Pakistan from a settlement on Kashmir.

Nehru died in the meantime. Jilted by the new Government headed by Lal Bahadur Shastri which did not encourage the Front leaders, the Front mounted a fresh offensive, against India. In the widespread anti-India Campaign the Front was supported by the Awami Action Committee, which had been formed to coordinate the Muslim agitation following the theft of the sacred relic and several youth and student organisations, constituted under the direction and help of Pakistan intelligence agencies in the State.

In February 1965, Sheikh Mohammad Abdullah, with Mirza Afzal Beg, the President of the Plebiscite Front, proceeded on Haj pilgrimage to Mecca. The Front leaders toured several countries in Europe, mostly in collaboration and on the hospitability of the Pakistan's diplomatic missions abroad, openly seeking support for the secession of the State from India. In Algeria, they met the Chinese

Prime Minister Cho-En-Lai. The Government of India impounded the passports of the Front leaders and when they arrived in India, they were arrested forthwith. Violent demonstrations led by the secessionist forces in Srinagar and the other towns of Kashmir, followed the arrest of the Front leaders.

All this provided a foreground for the large scale infiltration of the Pakistan armed personnel into the State in July 1965. Following the same pattern as it had adopted in 1947, Pakistan pushed in thousands of infiltrators into Kashmir, in the disguise of Mujahids, the crusaders, to lead an open rebellion of the Muslims in the State against India.[19]

The secessionist organisations, including the Plebiscite Front, had secret intelligence of the action plan Pakistan had drawn up and many of them favoured the Muslims to join the infiltrators in their fight against India. Some of them, including the President of the Plebiscite Front had already pledged their support to the infiltrators. However, the anticipated Muslim uprising did not follow the infiltration for many tactical and political reasons. India struck back, this time across the international frontiers as well as the cease-fire line in the Jammu and Kashmir State.

Realizing that Pakistan had lost the military initiative the secessionist organisations, particularly the Plebiscite Front and the Awami Action Committee, reiterated their demand for the right of self-determination of the Muslims in the Jammu and Kashmir State, mainly to restrict the implications of the Tashkent Agreement, which virtually ended the United Nations mediation in the Kashmir dispute. The Plebiscite Front went a step further and declared that any settlement reached between India and Pakistan, to which the Muslims of the State were not a party, would not be acceptable to them.

A more militant outlook inside, as well as outside the various secessionist organisations, including the Plebiscite Front, developed after the 1965 Indo-Pakistan war. A new generation of Muslim youth had grown under the shadows of the movement for plebiscite, which was imbibed by the ideological commitment to the Muslim nation of Pakistan. The movement for plebiscite, whatever may now be said to

whitewash its significance, upheld the quest for a separate and independent state for the Muslims, aligned with the Muslim nation of Pakistan. Completely bred upon the advantage of Muslim majoritarianism and Muslim precedence and oriented to the Muslimised political culture of the State, totally fundamentalist in content, the new generation slowly assumed the leadership of the secessionist movements in the State. The new leadership as it emerged, stressed that:

(i) The Muslim leadership of the National Conference had supported the accession of the State to India in 1947, against the will of the Muslims;

(ii) The secessionist movement led by the Plebiscite Front would not be able to liberate the Muslims from the Indian yoke because the form of protest against India, it had followed, was not adequate to force India to leave Kashmir;

(iii) The use of armed forces alone could compel India to accept the right of the Muslims in the State to self-determination;

(iv) The Muslim State of Jammu and Kashmir was a natural part of the Muslim nation of Pakistan.

The emergence of Bangladesh gave a setback to the secessionist forces in the State which directly led to the dissolution of the Plebiscite Front in 1975. Negotiations between the Front leaders and the Congress leaders commenced shortly after the Indo-Pakistan conflict drew to its close. The Front leaders who, before the dismemberment of Pakistan, had insisted upon the right of the people of the State to an independent political identity, which would determine its own relations with Pakistan, accepted to abandon the claim to a plebiscite and dissolve the Plebiscite Front if they were restored to power. An Accord was concluded between the Front leaders and the Indian Prime Minister, Indira Gandhi, by virtue of which power was transferred to the Front leaders who accepted to recognise the finality of the accession of the State and agreed to dissolve the Front and revive the old National Conference. In consequence, the Congress government in the State headed by Syed Mir Qasim resigned and Sheikh Mohammad Abdullah was elected the leader of the Congress Parliamentary Party in the State Legislature.[20]

Muslim secessionist movement, led by the Plebiscite Front, did not end with the dissolution of the Front. Generations of Muslims were socialised to the right of self-determination and the fulfilment of their Islamic destiny in Pakistan. "The Plebiscite Front was, no doubt disbanded but its bitter legacy remained. All its members could not be accommodated in the new power structure, although quite a few of them received lots of unmerited benefits. Some of its members, ideologically against Sheikh Abdullah's stand wanted the struggle for plebiscite to continue."[21]

The Accord war, restricted to the upper echelons of the Plebiscite Front, and did not percolate down to its rank and file, which believed that the transfer of power was forced on the Government of India by the Front leaders as a tactical step towards the realisation of their freedom from the Indian tutelage. Many of the Plebiscite Front leaders proclaimed openly that the Accord would be used to wreck the Indian positions in the State from within. In fact, the elections to the State Assembly in 1977, in which the National Conference, was arraigned against the Janata Party as well as the Congress, were overwhelmingly won by the Front leaders on the slogan of ending the Indian hold on Kashmir. The National Conference openly claimed that it would use State power for the liberation of the Muslims from the Indian domination. Ultimately the Front leaders, proved true to their professions and in a decade destroyed whatever sympathy and support India still enjoyed in the State.

The consolidation of pan-Islamic fundamentalism as a basis for a global strategy to unify the Muslims into an independent world power, with Pakistan as one of its focal centres, changed the entire nature and direction of the secessionist movement in the State. With Pakistan already at the back of the secessionist forces in the State, the process of fundamentalisation of the secessionist movement was rapid. It transcended the narrowly local loyalities with which the Conference leaders had identified the Muslim majority in the State as well as the secessionist movement, the Plebiscite Front had led against India.

The Muslim leadership in the State, ideologically closer to pan-Islamic fundamentalism, quietly surrendered to the new spirit of Islamic unity and revolution. The Indian leadership governed by moorings

which accepted balances of communal interests as the basis of secularism, refused to face the challenge the Muslim fundamentalism posed. Indeed, the Indian leadership as well as the leadership in the National Conference attempted to seek a compromise with the Muslim fundamentalist forces in the State.

Pakistan took advantage of the proliferation of arms in the region, that followed the crisis in Afghanistan, to militarise the secessionist movement in Jammu and Kashmir. Thousands of Muslim youngmen, fired by the feelings of a crusade against India, readily crosses over to Azad Kashmir and Pakistan for training in guerrilla warfare and armed subversion. After they had received training they recrossed into the State with an assortment of arms and equipment. In 1989, they mounted the first assaults on India.[22]

Signals from Afghanistan, received by the Muslims were far too meaningful to be ignored by them and their supporters. The breakdown of the resistance against the sweeping success of the Muslim fundamentalist forces in Afghanistan, close to the border of the State, provided the secessionist forces as well as Pakistan, enough ground to convey the message to the Muslims all over Jammu and Kashmir that the time of their victory had come. The liberation of Kashmir from India promised a new dawn, which would enable the Muslims to establish the domain of Islam in the State. The commitment was ideological, which bound the Muslims to the Muslim brotherhood and its rise to power and a position of precedence in the world, "Before you is the future in the Islamic World. The only taste now remains to give one last blow to the hold of the usurper and march towards the goal of Islamic brotherhood and its rise to power in the world victory of the Muslims is inevitable. History bears the testimony that the Muslim Jehad has always been invincible, the followers of the faith, who achieve martyrdom in the Jehad, will find themselves in heaven.[23]

The fundamentalist commitment was a part of an ideological projection, the press in Pakistan reflected its content. The *Nation* wrote:

"Two things have emerged clearly from one week of dramatic developments in the Kashmir Valley. There is a virtual uprising against the Indian rule and nothing short of a military crackdown can cope with the situation. The Kashmiri Muslims' struggle for freedom is at crossroads and a historic opportunity awaits them to transform it into the decisive assault for breaking the shackles of Indian bondage."

A description of the Muslim resurgence in Kashmir, found a different form in the foreign press. *The New York Times, International* reported:

"A resurgence of secessionist sentiment began nearly two years ago in Jammu and Kashmir, the only State with a Muslim majority in predominantly Hindu India.

Brave Kashmiris', came the summons from loudspeakers in minarets throughout Srinagar, summer capital of the Indian State of Jammu and Kashmir, 'the time has come to lay down your lives. V.P. Singh has conceded, however, that the Kashmiris have many justified laments. Two weeks ago, he appointed as Governor Jagmohan, an efficient administrator who governed the State from 1984 to 1989, thereby prompting Farooq Abdullah, the unpopular Chief Minister of Jammu and Kashmir, to resign in protest. Eager to demonstrate his goodwill, Jagmohan has distributed food during curfews, created new jobs and offered nearly $3,000 each to the families of three civilians killed by Indian guards. But tempers in Kashmir are still too hot to be soothed by token measures. Other factors have also crept in. The general cry is: We will go and do as the Germans have done. We will destroy the wall and cross over."

Alarmed by the escalation of the terrorist violence and its impact on the security environment of the State, Jagmohan noted in his diary:

"Subversive and terrorist activities continue unabated. During the month, 11 hartals were organised, dozens of bombs were exploded, hundreds of persons were injured, and two died.

Observance of 'Martyr Maqbool Butt Day' and publication of *Satanic Verses* provided cover to the subversionists to whip up emotions and give call for 'bandhs' and agitations.

'Maqbool Butt Day', on February 11, saw extensive trouble in the Valley. As a dress rehearsal, explosions started even two days before the so-called martyrs day. On the 'Day' itself, practically all shops in Srinagar and other major towns were closed. Violence occurred on a fairly large scale.

The disturbances of February 11 showed the Government in poor light—politically as well as administratively.

At the political level, no activity on the part of the workers of National Conference (F) and Congress (I) was visible. Surprisingly, though the city of Srinagar is represented by the National Conference (F) MLAs in the State Assembly, not even a few shops could be got opened. The passivity of the political leaders of the ruling alliance can be interpreted either as a case of studied indifference or of extreme irresponsibility. These leaders appear to be taking a self-destructive course—a course which is leaving the field wide open for the subversive elements like Jammu and Kashmir Liberation Front, People's League, Jama'at-e-Tulba, Muslim Students' Federation, Al Jung and Zia Tigers, etc. The Chief Minister, unfortunately, chose to be away to Australia and Singapore. This, besides leaving the political workers leaderless, caused much resentment amongst the general public.

IV
WAR OF ATTRITION

The State Governor received ample intelligence about the militarisation of the secessionist forces in the State and the role, the State administration, political parties and espionage agencies of Pakistan played in it. "From the beginning of 1988." Jagmohan wrote, "I had started sending warning signals to the Union Government about the gathering storm. But the men at the helm of affairs had neither the time nor the inclination, nor the vision, to see the signals." Jagmohan sent frantic messages to the Government of India about the fast-spreading militant violence in the State.[24]

The situation in the State deteriorated faster. Jagmohan noted in September 1988.[25]

"The subversive activity showed no sign of abatement in the month of September. If anything, the activity intensified.

On September 10, late in the evening, some unidentified persons opened indiscriminate firing at Ranibagh Mandir, Srinagar. On the night intervening September 17 and 18, an attempt was made on the life of DIG Kashmir Range, Ali Mohammad Watali, and his family members, by four young men armed with sophisticated weapons. One of the terrorists died in the armed scuffle, and his Russian made gun was seized. It is believed that the attackers were members of the Jammu and Kashmir Liberation Front and had been given arms training in Pakistan. On September 22, the house of N.K. Ganjoo, a retired Sessions Judge, who sentenced Maqbool Butt to death, was fired upon. On September 23, at about 8 p.m., the lane between the offices of DIG Kashmir and IG, CID, was subjected to indiscriminate firing. On the night intervening September 24 and 25, motor-cycle borne terrorists fired at the sentry on duty at the Srinagar Museum.

Interrogations of some of the detainees reveal that quite a number of young men crossed the border for securing arms training, and have returned for carrying out subversive and terrorist activities. The most unfortunate aspect of the whole affair is that not a single person could be apprehended while going to and returning from Pakistan, not a single weapon could be detected, and not a single motivator could be spotted. The matter came to light when bullets started flying and bombs exploding.

From religious platforms, the Moulvis invariably give political advice. They concern themselves less with religion than with politics. Some of the 'religious czars' in their respective areas have built their entire political following by addressing Friday congregations. Even political stalwarts have been making important speeches from the Hazratbal and other shrines.

Organisations like Jama'at-i-Islami, Umat-e-Islam, Islamic Students' League and Ahl-e-Hadis have been mounting their attack on the local practices and drawing inspiration from Islamisation of Pakistan and Bangladesh. The educational institutions, spreading narrow ideas in the impressionable minds, were supposed to be closed. But words were not translated into deeds. The citadel of the old and cherished values continues to be eroded from its foundations."

In October 1988, Jagmohan presented a detailed account of the widespread subversion which Pakistan and the secessionist forces carried on in the State, in the Governors Conference held in Delhi. The Governors Conference was presided over by the President. Both the Prime Minister and the Home Minister, were present in the Conference. Jagmohan was heard patiently and no one in the Conference expressed disagreement with his assessment of the situation in the State. But then, silence fell on the scene. "I expressed my opinion" Jagmohan wrote, "on the basis of the above mentioned notes in my diary. Everyone seemed to agree with my analysis. And yet no action followed.[26]

In May, he wrote to the Indian Prime Minister again, warning the Indian Government of the dangerous drift in which the State was.[27]

No one in the Government of India evinced any concern at the deepening crisis in the State. Jagmohan's warning went unheeded. The State Government, allowed the drift to continue. The Central Government refused to intervene. The secessionist forces triumphed.[28]

The tactical skill with which the terrorist violence was inducted into the State and has ever since been conducted, achieved several objectives for Pakistan. These were:

(i) the militants established their hold on the major section of the Muslims in Kashmir by ideological indoctrination and by force of arms;

(ii) they destroyed the confidence of the Hindus in the ability of the Government of India to protect them and thus alienated them completely; leading to their exodus;

(iii) by eliminating the Hindus, they destroyed the population balances which formed the bases of whatever semblance of secularism there still was in Kashmir and communalised the entire society in the State;

(iv) the demolished all the stable support bases India had in Kashmir.

(v) they succeeded in intimidating the Indian Government into a profitless resistance, which proved to be self-defeating, whereas the militants enchanced their ideological appeal and acceptance.

(vi) they achieved a large measure of Muslim approval for the religious war, they waged against India and the Hindus;

(vii) by their tactical manoeuvres of using the Muslims as a shield for their guerrilla warfare, they involved wide segments of the Muslim population in their operations.

Religious indoctrination had its effect on the Muslim masses, not only in Kashmir province, but in the province of Jammu as well. The dissent, from wherever it came from among the Muslims, was smothered by the fear of the gun and the select killing of the more resistant Muslim elements. With the Hindus, whose resistance to Muslim secessionism was long and effective, having been eliminated, the terrorist flanks assumed unquestioned sway over the whole State. While the vigorous process of political socialisation to the unity of the Muslims of Jammu and Kashmir with Pakistan, continued unchecked the fundamentalist forces increased their strength to formidable proportions.[29]

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Chapter II

REGIME OF TERROR

After the World War II political terrorism has undergone global proliferation. The intensity, as well as the extent of terrorism has increased in the last fifty years, with the development of military hardware and strategic technology. Due to cold war computations, access to the availability of military hardware became easy, as both the American as well as the Soviet block sponsored and supported subversion in areas where their interests conflicted.

During the last decade, terrorism has turned into subversive warfare in which sophisticated armaments, communication techniques and computerised instruments, besides weapons of mass destruction are widely used. The weapons used in terrorist subversion include various types of self-reloading assault rifles, machine guns, mortars and artillary, rockets, including booster rockets, explosives of all types, mines and missiles.[1] There are apprehensions, not altogether unfounded that the new weapons, the terrorists are expected to use, would include such weapons of mass-destruction as nuclear bombs, chemical and biological devices, and other toxic weapons. The induction of huge funds involved in narcotic drug traffic into international terrorism, an inevitable consequence of organised international crime, has created possibilities for the terrorist organisation to use weapons of mass destruction in their operations. There is sufficient material and technical information available in unclassified literature to enable terrorist units to fabricate crude nuclear devices, which have some probability greater than zero of functioning in the nuclear bomb.[2]

With the phenomenal increase in narco-terrorist activity the use of chemical and biological weapons, terrorist subversion assumes very

dangerous dimensions. Huge quantities of RDX explosive were carried to the target areas in India by drug-barons, causing widespread damage and devastation. Conduits through which the RDX flowed can carry chemical and biological devices to the target areas with more deadly effect and with lesser chances of detection. These weapons can be used to achieve tactical objectives, including mass-scale sectarian killing, subversion of social cultures in plural societies and widespread migration of population.[3]

Conventional weapons and ammunitions, bulk explosives, grenades and mines, and various types of rockets are available to the terrorists. Such munitions, move freely between governments which support terrorism and terrorist regimes. Added to these weapons, other armaments of greater destructive capacity are also available to the terrorists. Shoulder fired missile launchers have been extensively used by terrorists in various theatres of their operations.

II
IDEOLOGICAL BASIS

Political terrorism and its global expressions of international terrorism are, highly motivated and value-laden military operations. Terrorism is not only confined to political change, change in the instruments of authority and lines of control; it portends the reorganisation of the political culture of a society on a given and set pattern of ideological imperatives. "The liberation action" one Al Fateh declaration reads, "is not only the removal of an armed imperialist base, but more important it is the destruction of a society." Continuing further, the declaration reads: "The armed violence must seek to destroy the military, political, economic, financial and ideological institutions of the Zionist occupying state, so as to prevent all possibility of the growth of a new Zionist society. The aim of the Palestinian Liberation War is not only to inflict a military defeat, but also to destroy the Zionist character of the occupied land, whether it is human or social".[4]

Much less against the widely accepted view that terrorism involves violence, primarily directed to instil fear, terrorise and create insecurity among people, who may be or may not be targetted, terrorism

is organised military action planned on a distinctly different basis than the usual military operations, to achieve given idealised goals. Not a single instance of terrorist violence, of course, except organised crime, can be cited where the campaign of violence is not ideologically committed. Emphasis has, indeed shifted from ideological content of terrorist violence to its formal expression, mainly in response to cold war strains. The western literature on international terrorism, for obvious political interests, deemphasises the value-base of terrorist violence.

International terrorism has defined ideological commitments, namely:

(a) imposition of values, belief systems and social mores on cultures with different values, belief systems and mores;

(b) disruption of social cultures to enforce social change, the terrorist regimes seek to promote;

(c) alteration of the composition of population to forge unilinear demographic patterns;

(d) dissolution of sub-cultures to promote uniformity in belief systems;

(e) demolition of existing political regimes;

(f) subversion of political cultures and their subjection to ideological imperatives prescribed by the terrorist regimes;

(g) establishment of new sets of the instruments of political control to implement the ideological commitments of the terrorist regimes;

(h) establishment of fresh sets of instruments of total political control to implement the ideological commitments of the terrorist regimes.[5]

International terrorism, by its subversive character manifests in forms of violence and acts of hostility which are distinctly different from the belligerent operations of a conventional war. Since terrorism is mainly a war of attrition, more against a civil society, than against the political instruments of a state, the strategies adopted by the terrorist regimes are also different from the strategies, generally employed in a Conventional War. These strategies, however, should be differentiated

from the ideological objectives of international terrorism and the terrorist regimes may chose a specific number of these strategies or all of them together to achieve their objectives. These strategies include:

(i) ethnic extermination, elimination of communities, ethnic cleansing of minorities to subvert social culture of the targetted states;

(ii) forced migration of communities, ethnic groups and minorities to achieve specific demographic change;

(iii) selective killing of intellectuals, community leaders, scientists, social workers, torture and torture killings, hostage-taking and abduction to escalate terror:

(iv) assault on women, molestation, abduction and rape to break resistance to terrorist operations;

(v) destruction of centres of culture, places of worship and educational institutions of the communities, religious identities and ethnic groups targetted for terrorist attack; and imposition of restrictions on the observance of religious practices and religious worship to break their social cohesion.

III
TERRORISM IN KASHMIR

The war of attrition against India in Kashmir, which assumed full scale proportions by 1989, was designed with technical perfection by its sponsors, inside the State as well as in Pakistan. In its ideological content and tactical scheme, it was identical with general patterns of political terrorism. It had defined objectives, common to all forms of subsersive war. The militant organisations operating in the State aimed to:

(i) subvert the Indian support structures in Kashmir;

(ii) undermine the military capability of the Indian security forces in the State;

(iii) eliminate Hindus and the other minorities from Kashmir and to reduce all social balances, which were not based upon Muslim precedence;

(iv) use terror and intimidation to destabilise the political instruments fostered by India.

(v) fundamentalise the whole Muslim society in the State, more specially in the Muslim majority regions of the State, west of the river Chenab, including Kashmir, to build pressure on India to cede the Muslim majority regions of the State, including Kashmir to Pakistan.

The Muslim militancy in Kashmir was not committed to change aimed to replace the existing power instruments and political processes in the State. Its ideological content grew out of a world outlook based upon the postulates of pan-Islamic theology, aimed to unite the Muslim world into one unified nation governed by the precepts of Islam. The crusade in Kashmir, was therefore, a struggle to liberate Jammu and Kashmir from India and unify it with Pakistan. It underlined:

(i) the Muslims in Jammu and Kashmir formed a part of the Muslim nation of Pakistan and since constituted a majority in Jammu and Kashmir, the State, rightfully belonged to Pakistan;

(ii) the unification of Jammu and Kashmir with Pakistan would complete the process of the Indian partition, which was thwarted by India in spite of the United Nations intervention;

(iii) the Muslims in the State did not accept accession of the State to India and since India had denied them the right to exercise their option to join Pakistan, they had taken up arms to force India to withdraw from the State;

(iv) in their struggle against India they were aligned to Pakistan, the Muslim homeland on the Indian sub-continent;

(v) while the religious war against India was in process, social, economic and political organisation in the State had to be transformed to correspond to Nizam-e-Mustafa or the State governed by the law and precept of Islam;

(vi) the Hindus and the other minorities had to be eliminated because:

(a) they formed the frontline of the resistance to the secession of the State from India and its integration with Pakistan,

(b) they did not accept that Jammu and Kashmir formed a part of the Muslim homeland of Pakistan;

(c) they did not accept the reorganisation of State of Jammu and Kashmir on the basis of Muslim Law and precedent into a Muslim polity, the Nizam-e-Mustafa;

(d) they were not prepared to subject themselves to the social, religious, economic and political preeminence of the Muslim majority in the State;

(e) they refused to participate in the Jehad against India.

A wide range of strategies was employed by the militants and Pakistan to achieve their objectives. These strategies were:

(i) Build a campaign, supported by the press and the electronic media of Pakistan and Azad Kashmir and the vernacular press inside the State to distort the facts about the demographic, economic and political organisation of the State, its history and its political culture, malign India by accusing it of aggression and arouse the feelings of the Muslims inside the State and exhort them to rise in revolt against India;

(ii) take advantage of the Muslimisation of the State Government and its political isolation from the rest of India, to destroy the framework of the political institutions established in the State and demolish all power structures like the political parties, pressure-groups and other alignments of interest articulation;

(iii) capture the security structures of the State by infiltration and undermine their normal function to compel the Government of India to deploy national security forces and the army in the State;

(iv) use the deployment of the national security forces in the State to:

  (a) prepare the Muslim psyche for an ultimate battle with India;

  (b) arouse international opinion against India by charging its security forces of oppressing the Muslims in the State;

(v) eliminate the Hindus in Kashmir in order to:

(a) destroy the most stable support-base India had in the Kashmir province;

(b) wipe out all communication linkages, feedback channels and flow of information to the Government, a process in which the Hindus in Kashmir played a factoral role;

(c) demolish the balances of population and convert the province into a purely Muslim populated region and consequently remove the traditional patterns of religious coexistence which formed the basis of the social organisation of the province;

(d) complete the process of fundamentalisation of the Muslim masses in the State to forge them into a monolithic communal force against India;

(vi) extend the militancy to the Muslim majority districts of the Jammu province, and consolidate the Muslims to the west of Chenab, into another militant flank against India, and use them as a lever for a probable settlement on the division of Jammu and Kashmir along the river Chenab;

(vii) unleash a low profile civil war in the State to exhaust India and force it to surrender and simultaneously solicit intervention of the third powers to compel India to accept a settlement more favourable to Pakistan.[6]

By and large, Pakistan and the secessionist forces in the State succeeded in achieving their targets. The media mechanics in Pakistan as well as in Azad Kashmir manufactured volumes of false stories about the bloody battles the Muslim Mujahidin fought with the Indian troops and the heavy casualities the latter suffered. Inside the State, the secessionist forces, already in a state of preparedness picked up the cry Pakistan raised and launched a virulent attack on the security arrangements. The local vernacular press, which depended for financial support on the Muslim middle class and which had always supported Muslim separatism, communal precedence of the Muslim majority and a settlement with Pakistan, joined the tirade against India. A large section of the vernacular press controlled by the secessionist partisans,

mainly the Jammait Islami, openly committed themselves to the unification of the State with Pakistan.

As the militant violence increased towards the fall of 1989, the security structures of the State, disintegrated rapidly. Partly because of the inadequacy of the local security forces and partly because of their ineffectiveness to deal with the terrorist violence, the State Government was compelled to deploy the Central security forces in the State. Both by constitutional precept and agreement, to which Jammu and Kashmir was not an exception, the federal police forces were deployed in the Indian States on security duty to deal with any law and order situation, which the local police was unable to control. Besides, the contingents of the Central Reserve Police, the State Government deployed Border Security Force and elements of the Indo-Tibetan Border Force on internal security duty. That was actually, what the secessionists aimed at. They sought to force a confrontation between the Indian security forces and the militants in order to create the psychological impression of a state-wide Muslim revolt against India.

The two news journals, owned by the National Conference and the Congress had no credibility. At this juncture of crisis when these news journals should have been toned up to rebut the false propaganda poured in from Pakistan, their columns were filled by self-condemnatory profiles which sought to explain why the State power had failed to attain the state of Islamisation promised to the people of the State by the Indian leaders.

The Muslimisation of the various political and economic processes had begun during the tenure of the first Interim Government, constituted in 1947, and continued even after. Within the broad framework of the special status envisaged by Article 370, which isolated the State from the rest of India, it was far easy for the secessionist elements to infiltrate into the administrative cadres of the Government. In fact, the entire administrative organisation of the State had since been undermined by the secessionists and converted into a major bulwark of resistance against India.

The Muslim bureaucracy played a major role in the demolition of the power structure of the State to pave the way for the functional atrophy of the State Government. Right from the time of the Interim

Government, the Muslim bureaucracy had been built as a flank of the National Conference, but after the disintegration of the Conference, it had grown into a powerful instrument of Muslim separatism. It was actively assisted by the secessionist flanks in the political parties, which constituted the Government and the nexus between them completed the destruction of whatever semblence of institutionalisation had survived the ravages of the movement for plebiscite in the State.[7]

The strategies adopted by the militants to demolish the security structures of the State worked with devastating effect. With the onset of the militant violence in the State, the security structures in Kashmir, heavily infested by secessionist elements and led by personnel, deeply indoctrinated by Muslim fundamentalism crumbled rapidly. The flanks of Kashmir armed police recruited mainly from among the Muslims of the border districts of both the provinces of Jammu and Kashmir, struck work and mutineed, allegedly on being treated indifferently by the Government. This happened at a time when the militant violence had entered a decisive phase.

The obdurate strike of the State police forces, aroused fears of an internecine scuffle between them and the Indian troops and many rumours spread that the State police forces had fraternised with the militants, distributed arms among them and attacked the Central Reserve Police personnel and dealt heavy damage upon them. Rumours also spread that the State police had been ordered to be disarmed but it had refused to lay down arms. Whatever happened behind the scene, the elements of the local police, stood bye, everywhere in deliberate indifference, without any meaningful direction, to deal with the situation.

The media machines in Pakistan as well as Azad Kashmir, along with the vernacular press in Kashmir, poured out volumes of abuse and invective against the Indian security forces. Allegations were made that they were being used to oppress the Muslims, who were fighting for their legitimate right of self-determination. Stories were floated about the inconvenience, imposition of curfew caused to the people, about the shortage of cooking gas and soaps, the failure of the State Government to provide transport for the export of fruit, the breakdown of industry etc. But there was little or no reporting of the death and

destruction and the atmosphere of fear and terror, which was rapidly pervading the life in the State. Kashmiri Hindus, killed by the militants, were condemned as traitors to the cause of the Muslim struggle and informers of the Government of India, who were justly punished for having betrayed the Muslim Jehad.

While the secessionist forces consolidated their hold on Kashmir, they extended their operations to the Muslim majority districts in the Jammu province. The secessionists aimed to militarise the Muslims in these districts, in order to provide wider conduits for infiltration of the trained militants from Pakistan and secondly, to drive out the Hindus, who formed a more sizeable minority in these districts. If the Hindus in the Jammu province were isolated in the two districts of Jammu and Kathua and the fringe of the Udhampur and Doda districts, east of the Chenab, a basis could be provided for Pakistan to accept the division of the State along the Chenab. A widespread campaign of subversion was launched in these districts, to consolidate the secessionist forces and organise the despatch of Muslim volunteers for arms training, across the Line of Control. Evidently, with the Hindus thrown out of the Muslim majority districts, the secessionist operations could easily command the features behind the Indian defences.

The terrorist violence in the district of Doda intensified with the induction of the foreign mercenaries into the State. The administration in the district did not take long to crumble, leaving the terrorist flanks operating in the district, free to establish a militant regime there.

The Doda district was carved out of the Hindu majority district of Udhampur by the National Conference Government, to seggregate the Muslim majority regions of the Jammu province, contiguous to Kashmir. It is situated in the outer hills of the Jammu province and is bordered in the north by the valley and in the south and south-west by Udhampur and Kathua districts. In the east and south-east Doda is contiguous to Ladakh. The total population of the Doda district is 4,25,262, of which the Muslim constitute a majority of 55 per cent.

The militant operations spread to Doda from Kashmir and followed the same tactical patterns to fundamentalise the Muslim society in the district that the militants had adopted in Kashmir. The public address system, in the mosques, were used to exhort the Muslims to

prepare for the crusade against India. The State Government reluctant to recognise the spread of terrorism to the Jammu province, took no effective measures to meet the threat the terrorists posed in Doda. As planned, the terrorist offensive in Doda, unfolded in several phases

(i) the terrorist launched a widespread man hunt of the Hindus, killing them wantonly in large numbers;

(ii) they warned the Hindus to evacuate from the district;

(iii) they smothered the last resistance against secessionism, among the Muslims who were opposed to Pakistan, by force and intimidation;

(iv) after the Hindus were eliminated and the society fundamentalised they launched a major military offensive against the Indian security forces;

(v) having established a terrorist regime in the district, they extended their operations to the entire Jammu province.

IV
GATHERING STORM

There is considerable evidence to show that infiltration of trained militants into the State commenced after the Assembly elections in June 1983. The survile subjectivity and subterfuge with which the Government of India dealt with the fast deteriorating law and order situation in the State, particularly after the widespread communal riots in south Kashmir in 1986, provided enough ground for the fundamentalist forces to arm themselves with the help of Pakistan. The local Muslim leadership played the second fiddle to them. A highpower Cabinet sub-committee, was appointed by the State Government in 1984, to inquire into the militant activities in the State reported:[9]

"In his statement to the State authorities Mohammad Maqbool Bhat immediately after his arrest in 1976 had disclosed that in 1974, a dialogue between Sher-i-Kashmir, Sheikh Mohammad Abdullah and Prime Minister through their representatives Mirza Moh'd. Afzal Beg and Shri G. Parthasarthy had created doubts and apprehensions in the minds of public as well as in the official circles in Pakistan that Sheikh Sahib was planning to sell the State to Government of India. With a

view to dispel these doubts Dr. Farooq Abdullah was asked by Mohammad Maqbool Bhat and his colleagues to devote the public speeches to impress upon other Pakistanis that Sheikh Sahib was continuing efforts for the right of self-determination and that the Accord which could be reached between the Sheikh and the Prime Minister was meant only to get into power and thereby accelerate the process to attaining the right of self-determination. Mr. Bhat had further stated in his statement before the State authorities that Dr. Abdullah had dispelled the doubts of the people to a large extent. After the convention Mr. Bhat had stated that Dr. Farooq Abdullah had an exclusive meeting with the late Shri Z.A. Bhutto but Dr. Abdullah had not divulged to Shri Bhat as to what was discussed between the two. Another fact which is not disputed is that Dr. Abdullah had himself taken and administered to others the oath of allegiance and dedication to the cause of so-called liberation of Kashmir. The photographs showing Dr. Farooq Abdullah, Aman-ullah Khan and Hashim Qureshi administering oath have been published by the press and is not in dispute. Dr. Abdullah has given his own version of his trip to Pakistan which too has been published by the press. We are not, however, referring to that explanation as we are not drawing any conclusive inference from these facts in isolation. These facts have been stated to enable a clearer appreciation of the situation which prevailed in the State and of the facts which have now come to light."

It is difficult to state as to how was the State Government was completely unconcerned of induction of arms and infiltrators into the Kashmir Valley. Much is also not known as to who constituted the militant leadership inside the State. If the escalation of the militant violence provided any indication of the intentions of Pakistan, it is evident that Pakistan was using the militancy in the Punjab with tactical effect to create conditions for a major operation in Jammu and Kashmir, which would be far too heavy for the Indian defences to bear. The most common man in the streets of Srinagar was aware of the growing strength of the secessionist forces, the widening influence of the fundamentalist Muslim organisations and the deepening communal distrust all over the State. The devastation of the Hindus by the widespread Muslim assault on them in 1986,[10] the destruction and desecration of the Hindu religious places which the whole fracas involved and the

Muslim-Buddhist riots in Ladakh and Kargil divisions, had already laid a trial of communal distrust in the State. Both in Kashmir and Ladakh, Muslim fundamentalism had spread fast. In Kashmir, the Hindus were smothered and in Ladakh, the Buddhist majority was completely alienated. Several major developments occurred in Kashmir which indicated that the support-bases India had in the State, were fast disintegrating and it was evident that it would not be after long that the Indian Government would be confronted with a situation which was far worse than it had faced so far:

(i) A virulent propaganda campaign was underway among the Muslims in the entire Valley as well as the Muslims in the Muslim majority districts of the Jammu province that the time had arrived for a Jehad against India and the Hindus, for the liberation of the State and the Muslims, particularly the youth, should prepare themselves for the sacrifices the Jehad would involve;

(ii) the Jamait-Islami cadres were inducted into the managing bodies of the Mosques and Muslim religious institutions and trusts to gain control over them;

(iii) severe anti-India and pro-Pakistan propaganda was initiated in the Muslim missionary schools, mostly organised by the Jamait-Islami;

(iv) in almost every local area, community centres for political education, called the 'Islamic Study Circles' were organised all over the province. The study circles were run and controlled by the Jamait-Islami cadres in collaboration with non-Kashmiri Muslim preachers, who appeared and disappeared mysteriously and whose antecedents were suspect;

(v) there was a rapid shift in the entire local press in favour of Muslim fundamentalism;

(vi) the recitation of National Anthem and hoisting of National Flag in the schools and other public institutions was mysteriously discontinued and people were dissuaded from attending cremonies where the National Anthem was recited or the National Flag hoisted;

(vii) a well-planned psychological war was unleashed against the Hindus, which involved;

(a) denigration of their religious precept and rituals;

(b) desecration and destruction of their temples;

(c) encroachment on their religious endowments, unlawful occupation of the land attached to their temples and ancient shrines;

(d) frequent provocations to arouse general communal tension to instil fear among them, so that they abandoned their homes;

(e) increased emphasis on Tablig or the propagation of Islam accompanied by psychological pressure to compel the Hindus to accept conversion;

(f) sudden spurt in cow-slaughter in violation of laws in force in the State and the appearance of numerous shops in the rural Kashmir as well as Srinagar where beef was put on sale openly;

(g) increase in the incidence of violence, sudden eruptions against the State Government, bomb blasts and arson;

(h) promotion of the distress sales of Hindu property, with finances made available from various Muslim endowments and trusts;

(i) intimidation of the small Hindu business community to force it to close down whatever business enterprises it owned;

(j) the reduction of the recruitment of the Hindus in the services to almost eliminate them completely with a view to compel them to leave the State;

(k) reduction of the intake of Hindus in the higher educational institutions.

The other development, which assumed frightening proportions after the Muslim attack on the Hindus in 1986, was the increasingly open expression, the Muslim secessionism received and the widening permissibility which the entire State apparatus provided to Muslim

communalism. A long debate went on among the Hindus in the State, and strong feelings were expressed by them that Pakistan aimed (i) to build its offensive in the Jammu and Kashmir State where militancy could be easily used to plunge the Muslim masses into a civil war against India; and (ii) to close the military options for India against Pakistan at the time when Pakistan launched a final assault to intervene in the civil war in Kashmir.

The Hindus tried their utmost to pursuade the Indian leaders to see the danger inherent in the fundamentalist resurgence in the State and the fresh inspiration it provided to the secessionist forces. Many Hindu leaders and prominent men, pleaded with the National Conference as well as the Congress leaders, who constituted the coalition Government in the State, to take effective measures to curb the fundamentalist and secessionist forces. As the bomb blasts increased in their intensity and the law and order machinery began to give way, the Hindus made earnest entreaties to the Government of India to take necessary administrative measures to check the growing violence in the State. On 15 August 1989, the Independence Day of India, the Hindus unfurled the Indian Flag in the Ganpatyar temple in the heart of Srinagar, after they had sought the protection of the police. All over the valley, the Indian Flags were burnt in scores and the Flags of Pakistan and the Jammu and Kashmir Liberation Front were hoisted.

The protestations, the Hindus made, went unheeded. The State Government issued vague and contradictory statements, reiterating the faith of the coalition partners in secularism, Kashmiri identity and Muslim precedence. In several of the statements the coalition partners levelled charges against each other as well as against the Hindu communalists who, they alleged, were wanting to disturb the peace in the State. To whitewash the truth, many of the Conference leaders traced the Muslim unrest to the dominance of Kashmiri Pandits in the Central Government offices in the State, because of which the potential Muslim talent was frustrated with Indian secularism. The Congress leaders of the State indulged in self-condemnation and charged everybody except the Muslims for what had happened in the State.

The State Government, with an unstable political executive, still committed to the communal precedence of the Muslims, and a

Muslimised bureaucracy with professional flanks, avowedly anti-India, took no notice of the widening turmoil in the State. The abject depths to which the Indian prestige reached in the State, is evidenced by the fact that the Chief Ministers and the other Muslim leaders, paid lip-service to Indian unity and secularism so long as they remained in power but denounced India and openly called for the secession of the State once they fell out of power.

Even after the rumblings of the impending storm were audible, the Government of India allowed the drift to continue. The Kashmiri Pandits, the dramatis personel of the Greek tragedy which slowly unfolded in the State, watched the fateful drama, draw to its close.

V
DISINFORMATION CAMPAIGN

During the struggle for Indian liberation as well as in the aftermath of the partition, the Congress leadership spared no efforts to conceal the ugly face of Muslim communalism, in India. For the growth of the Muslim separatism in the Muslim majority provinces of India, and their eventual secession from India in 1947, the Congress leaders blamed the British for their unholy designs of divide and rule. In Jammu and Kashmir, when Muslim separatism made its appearance, the Congress leaders spared no efforts to conceal its real character. Right from the time of the accession of the State to India, deliberate attempts were always made to provide cover to the evolution of Muslim fundamentalist and secessionists movement in the State. The various forms of Muslim communalism and separatism which rampaged life in the State during the last five decades, and which imparted the secessionist movements their ideological content and tactical direction, were camouflaged under the banners of ethnic centricism, subnational autonomy, regional identity and even secularism.

Largely, perceptional aberrations, misplaced notions and subterfuge, characterised the official as well as non-official responses to the upheavals which rocked the State from time to time. More often, the real issues, confronting the State were overlooked by deliberate design and political interest, a policy which in the long run operated to help

the secessionist forces to consolidate their ranks and their hold on the people in the State. The shrill cries of "Jehad" against India and the Hindu infidels, to undo the wrong they were accused of having done to the Muslim majority in the State by usurping its right to join Pakistan, were always underestimated. Even after widespread militant violence struck Kashmir in 1990, and thousands of innocent people were killed in cold blood along with hundreds of Indian security personnel and the whole community of the Hindus in Kashmir was driven out of the Valley, disinformation campaign, to cloud the real dangers the terrorist violence posed to the nation, continued unabated. Indeed, efforts were made to sidetrack the basic problems of terrorism, secessionism and the role of militarised Muslim fundamentalist forces in the whole bloody drama enacted in the State and divert the attention of the Indian people to trivial concerns, which had no bearing on the developments there. The disinformation campaign was aimed to confuse the Indian public opinion about the dangerous import of the militarisation of Muslim separatism in Kashmir and its implications for the unity of the country.[11]

There was a subtle effort, which was coordinated at various levels, both official and non-official, to divert the attention of the Indian people from the menacing threat presented to the security of India by (a), the militarisation of pan-Islamic fundamentalism in South Asia with its epicentre in Pakistan and (b) the induction of militarised fundamentalist flanks into Jammu and Kashmir to wage a war of attrition against India. The broad scheme of the disinformation campaign spread into several propaganda formats, based upon the following themes:

(i) Muslims of Jammu and Kashmir were alienated by misgovernment and oppression, which India and the Hindus in Kashmir, perpetrated upon them.

(ii) Muslims in the State were excluded from political participation in the exercise of state power by the Government of India and the Hindus.

(iii) The Government of India and the Hindus deprived the Muslims of their due share in the political processes of the State by,

(a) rigging elections;

(b) excluding the Muslims from the administrative organisation of the State;

(c) denying them their share in the services of the State Government and the offices of the Government of India, in accordance with the ratio of their population.

(iv) The Muslims were subjected to economic deprivations, which resulted in widespread poverty among them and unemployment among their youth.

(v) Hindus in India and the Indian Government refused to recognise the right of the Muslim in the State to religious precedence and their religious obligation to the policy based upon the law precept of Islam.

VI
POLITICAL ALIENATION

A major thrust of the disinformation campaign revolved round the alienation of the Muslim masses, particularly the Muslim youth in Jammu and Kashmir. Alienation, understood as the dislocation of the Muslims from their political and social environment, it was alleged, had set in, due to the psychological reaction to their exclusion from the political processes in the State and their withdrawal from all forms of political participation. It was alleged that political application of the secular equality, envisaged by the Constitution of India, to the State, impaired the religious political and economic precedence of the Muslims, which formed the basis of its autonomy. It was also alleged that secular equality embodied by the Constitution of India could not be reconciled to the Muslim identity of the State and the militant violence symbolised the irreconcillability.

Accusations were levelled against the Government of India and the Hindus inside the State as well as in the rest of the country, that they had unceasingly sought to demolish the separate and independent identity of the State and terminate the autonomous political organisation, ensured for it, by the provisions of Article 370 of the Constitution of India. Many leaders in the Congress which was in the opposition in 1990, when the terrorist violence erupted in the state, several leaders

of the political parties in the United Front Government and many leaders in the left parties and parties professing commitment to socialism and classless society, went as far as to make wild claims that the accession of the State was conditional upon the recognition of its autonomous Muslim identity and the National Conference, led by Sheikh Mohammad Abdullah, had supported the accession of the State to India on the assurance of the Indian leaders that the Jammu and Kashmir State would not be integrated into the secular constitutional organisation of India and would instead be reconstituted into a separate political entity on the basis of the Muslim majority character of its population. Inside the State, the Pradesh Congress, even the Janta Dal factions, blamed everybody; the Indian Government, the State Governments, which they had themselves run, the Hindus, imperialist forces and foreign hands, for the onset of the militancy in the State, absolving the Muslim fundamentalist forces and secessionist movement of all responsibility for the death and destruction, they had brought about. Most of these leaders indulged in self-condemnation and went as far as to enumerate the wrong done to the Muslim community and their failure to recognise the right of the Muslim majority to reorganise the State on the basis of the Muslim law and percept.[12]

Many of these leaders demanded and insisted upon the restoration of the autonomous position, the State enjoyed before the constitutional changes embodied in the "Delhi Agreement", were implemented by the Presidential Ordinance in May, 1954. The National Conference leaders demanded a political organisation for the State, which would be based upon the exclusion of the State from the constitutional organisation of India, by abrogating the application of the provisions of the Constitution of India, which were extended to the State by the Presidential Orders of 1954, and the subsequent orders promulgated to integrate the State into the secular political organisation of India. They demanded a political package, to form the basis of the political process, scheduled to be initiated in the State, which they wanted to envisage:

(i) Complete exclusion of the Jammu and Kashmir State from the constitutional organisation of the Constitution of India, extended to Jammu and Kashmir by successive Presidential Orders;

(ii) the recognition of the right of Muslims to reconstitute the state into a Muslim polity;

(iii) the recognition of precedence of the Muslim majority in the society, economic organisation and the government of the state and;

(iv) virtual relegation of the Hindus and other minorities in the State to a subject and surrogate, population.

Another major political factor which was alleged to have led to the alienation of the Muslim was that they were denied participation in the political processes of the State Government and the Union Government had always manipulated the configuration of power in the State, to the exclusion of the Muslim masses. Allegations were made that the electoral processes in the State were rigged to keep out the "true representatives of the Muslims." It was claimed that, had fair elections been held in the State, the Muslims would have given to themselves a government, based upon Muslim law and precept and independent of the federal government of India. In a Muslim State, which would be based upon the religious law and precedent of Islam and in which the precedence of the Muslims would be recognised in economic, social and political organisation, the Muslims would not have needed to rise in revolt against India.

Allegations were also levelled against the Government of India that the Muslims had been denied the political power, which they were ensured by the separate constitutional organisation of the State. The successive State Governments were blamed of having organised the decision-making units in the State in a manner that were dominated by the Hindus, who distorted the decision-making processes of the State Government to the disadvantage of the Muslims. Several left extremist leaders went to the extent of identifying the Muslim militancy with the conventional class war in which the Muslims were characterised as the downtrodden and the exploited masses.

The Muslim leadership in the State, which had overtly and covertly supported the fundamentalisation of the Muslim society, also blamed the Government of India and the Hindus of having excluded the Muslims from their rightful share in the exercise of political power and the decision-making processes of the State, Government. They joined to

denounce India for the ills which, they alleged, had led to the militarisation of the Muslim protest. The Muslim United Front, a combine of several organisations, ideologically committed to the Muslimisation of the State and its secession from India. The Jamait-Islami, the main fundamentalist Muslim organisation, and the dissident splinters of the National Conference, accused the Indian Government and the Hindus of having deprived the Muslims of political power by having rigged the election held in 1987, and installed into power the National Conference-Congress coalition, headed by Farooq Abdullah. The National Conference leaders expressed their anger against the Government of India and the Hindus in their own way. Most of the Conference cadres, bred up in the anti-India movement led by the Plebiscite Front, blamed the Congress leadership of having interfered with the function of the Conference government. In the moments of great crisis, when the militant violence began to spread rapidly and paralysed the entire administrative organisation of the State, the National Conference leaders denounced the appointment of Jagmohan as the Governor of the State, who was called by the rank and file of the Conference, "Assassin of the Turkman Gate" and a sworn enemy of Islam. Farooq Abdullah, who headed the Conference-Congress Coalition Government in the State accused the United Front, Government of interference in the affairs of the State with a view to scuttle the freedom of the Muslims. The Coalition Government resigned in protest against what the leaders of the Coalition Government termed as the deliberate attempt of the Indian Government to throttle the aspirations of the Muslim majority in the State. The Congress leaders in the State, as well as in India, joined the Conference in its condemnation of the quick and effective measures Jagmohan adopted to contain the rapidly escalating militant violence.[13]

The Conference leaders added fresh candour to the disinformation campaign to cover the real motives behind the ethnic cleansing of the Hindus from the valley. They made wild statements about the exclusion of the Muslims from the services of the State Government and the Government of India, which they alleged were dominated by the Hindus. The run-away leaders of the National Conference and the local Congress and the remanents of the left factions of the Communist Parties, who had not made public confessions of their guilt and fraternised

with the Mujahids, and who had fled Kashmir before the Hindus did and had taken quarters in Jammu and the other towns of India, led the campaign to spread false stories and canards about the terrorist violence in Kashmir. Flanked by swarms of special security officers and housed in well guarded fortresses, they commended the courage of the Muslims in Kashmir in having risen against injustice and denounced Jagmohan, the Indian security forces deployed in Kashmir and the Hindus, who had oppressed the Muslims and deprived them of their rights.

The human rights activists and many more people, who saw their advantage in furtherance of the Muslim crusade in Kashmir, ultimately a post cold war manoeuver to destablise India, joined them. The whole exercise was motivated by design to hide the real character of the militant violence in the State and its rabidly communal and separatist ideological commitments.

VII
MUSLIM PRECEDENCE

After the accession of the State to the Indian Dominion in October 1947, the Government of Jammu and Kashmir State was reconstituted to give effect to the transfer of power to the people in accordance with the practice followed by the Government of India in the princely States. The transfer of power in the State was aimed to end the rigours of the princely rule and ensure the exercise of authority in accordance with the democratic process and the acceptance of administrative responsibility. However, the transfer of power in Jammu and Kashmir assumed a different direction. No sooner did the National Conference leaders constitute the first Interim Government, they abandoned their commitments to all secular norms and set out to reorganise the State on the basis of the communal precedence of the Muslim majority. The rapid transformation of the whole economic organisation of the State, which upturned the property relations, the Dogra rulers had established and which the Interim Government accomplished, ostensibly to eliminate exploitation and poverty, led directly to the emergence of a new Muslim middle class, which in the years to come, formed the mainstay of the Muslim separatist movements in the State. The first Interim Government secured the exclusion of the State from the con-

stitutional organisation of India, mainly to secure the social, political and economic interests of the Muslim majority in the State. In their parleys with the Indian leaders, the Conference leaders insisted upon the institution of a separate Constituent Assembly for the State, which would formulate a separate constitutional framework and sets of political imperatives to safeguard and basic right of the people in the State, independent of the fundamental rights, the Constituent Assembly of India had evolved. More particularly, the Conference leaders vehemently opposed the acceptance of all rights to equality and protection of minorities, which the Constitution of India envisaged, on the ground that such rights conflicted with the economic reforms, the Interim Government had undertaken. The Interim Government secured the abdication of Maharaja Hari Singh and after that, did not taken long to assume total control over the authority on the State. In less than a year, the Hindus were eliminated from the economic organisation of the State, its government and administration. Sheikh Mohammad Abdullah, the Prime Minister in the Interim Government, who virtually became the ruler of the State, headed the Auqaf-Islamia, the Muslim Endowment Trust, but demanded the dissolution of the Dharmarth, the Hindu Endowment Trust, which the Dogra rulers had established. The Interim Government forged a new Muslim ruling elite, which ruled the State in the decades which followed, relegating the Hindus to a conditions of abject servitude.[14]

The Interim Government packed the Constituent Assembly with Muslims. Seventy-three of its seventy-five members were returned unopposed and without contest and the remaining two seats in the Assembly, were also bagged by the National Conference after their opponents were driven out of the contest. In the Assembly, around three fourth of the members were Muslims. The whole delimitation of the constituencies was based upon disproportionate distribution of population, ensuring the Muslim majority province of Kashmir a heavier weightage than the Hindu majority province of Jammu.[15] When Sheikh Mohammad Abdullah denounced the Delhi Agreement in 1953, and demanded the separation of the State from the territorial jurisdiction of the Union of India, the handful of the Hindu members in the Assembly stood against him and supported the second Interim Government headed by Bakshi Gulam Mohammad. Few of the Muslim

members of the Constituent Assembly offered their support to the second Interim Government, during those critical days after the dismissal of the Interim Government headed by Sheikh Mohammad Abdullah. Later they were bought by Bakshi, for a fairly high price, which was paid at the cost of the Hindus.

Bakshi did not end the Muslim precedence in the government and the society of the State and in spite of the partial application of the fundamental rights, envisaged by the Constitution of India to Jammu and Kashmir, the process of the elimination of the Hindus from the political and economic organisation of the State continued unabated. Bakshi Gulam Mohammad also continued to head the Muslim Endowment Trust, the Auqaf-Islamia. After the Constituent Assembly completed its labours and a separate constitution was promulgated in the State in 1957, Bakshi packed the first Legislative Assembly, on the basis of the constituencies delimited for the elections to the Constituent Assembly. The Muslims of Kashmir were ensured perpetual heavier weightage in the elections to the State Legislature than the people in Jammu and Ladakh. During the last four decades, legislative majorities were predominantly Muslim. The demand of the Hindus of Jammu for a review of the delimitation and the four decades long struggle of the three lakhs of Hindus and Sikh refugees for the citizenship of the State, was never met.

The scourge of the Muslim precedence spread wider. Not only were legislative bodies and the political instruments dominantly Muslim, the entire administrative organisation was Muslimised rapidly within days after the Interim Government was saddled in office. The rapid process of summary removal of the Hindus from the State services was initiated on the pretext of communal imbalances in the services which the Conference leaders alleged, characterised the administrative organisation of the State. The allegations were baseless. Glaring imbalances characterised the administration of the State, but the imbalances were not communal in character. The State was virtually governed by the British and their officers in the Indian Political Department, who were posted in the State to conduct its administration. The Dogra ruling elite was not Hindu, it was constituted of the small agrarian middle class, which was equally Muslim. The services of the State were dominated by the British and the men of the Indian Civil Service, besides the clansmen of the ruling dynasty and a section of Dogra

ruling elite, almost half of which was constituted by the Muslims. The ranks of the State army were divided in a ratio of 55 per cent Hindus and 45 per cent Muslims, mostly drawn from the non-Kashmiri speaking subjects of the Dogra rulers. The Hindus of Kashmir and Jammu, who had taken to English education far ahead of their Muslim compatriots, were employed in subordinate services, on petty posts, and they licked the mud for the Raj as well as the British empire.

The Interim Government, removed the senior Hindu Officers of the State Government on charges of having supported the Dogra rule, replacing them by the henchmen of the National Conference and political adventurists. A virtual embargo was imposed on the employment of the Hindus of Kashmir in the State services, apparently to rectify the alleged communal imbalances but in reality to Muslimise the various instruments of authority as well as the lines of its control.

The partial application of the Constitution of India in 1954, and the promulgation of the Constitution of Jammu and Kashmir in January 1957, upheld the precedence of the Muslim majority. The application of the fundamental rights envisaged by the Constitution of India to the State by virtue of the Presidential Order of May 1954, was restricted by numerous exceptions and reservations. This armed the State Government with arbitrary powers to effect reservations for classified sections of permanent residents of the State, which the successive State Government used ruthlessly to promote Muslim interests.

The following facts reveal the extent of domination and precedence the Muslims, particularly the Muslims of the Kashmir province, enjoyed in the Government and politics of the State;

(a) The imbalances in the delimitation of constituencies in the two provinces of Jammu and Kashmir and the exclusion of two and half lakhs of Hindu refugees, living in the State from 1947, was mainly aimed to reduce the weightage of the Hindus in the legislative processes of the State, ensuring a three-fourth majority for the Muslims in the State Legislative Assembly. The representation of the Hindus was maintained at an average 31 per cent of the seats in the Legislative Assembly. The entire Sharnarthi population was deprived of any representation in the local legislative bodies. In the delimitation of the electoral constituencies, gerrymandering was meticulously used to

neutralise the decisive Hindu and Sikh weightage in, at least, three constituencies viz. Habbakadal, Anantnag and Baramulla in the Kashmir province and three constituencies in the Districts of Doda and Udhampur in the Jammu province. Consequently in Kashmir, the Hindus and the Sikhs did not have even a single non-Muslim majority constituency, where-from a representative of their choice could be elected to the Legislative Assembly of the State. Generally, the Hindus and other non-Muslim representatives, elected to the State Legislative Assembly from Kashmir, were mercenaries and men of small virtue, who never enjoyed the confidence of their community. The records of the proceedings of the Legislative Assembly reveal how the Hindu representatives supported the legislation aimed to exclude Hindus and other minorities from the organisation of the State Government and its political function and impose limitation on their entry to the educational institutions of the State. It will not be out of place to mention here, that when controversy raged over the passage of the Resettlement Bill, which the National Conference Government, headed by Sheikh Mohammad Abdullah, introduced in the Assembly, to open the floodgates for the re-entry into the State, of the Muslims from Pakistan and the Occupied Territories, the Hindus representatives did not voice their disapproval of the Bill, which they were repeatedly told would prove disastrous for the State. None of the Hindu legislators, except those from Jammu, who were elected by the opposition, raised the issue of the thousands of Hindus refugees uprooted from the territories of the Kashmir province occupied by the Pakistan.

(b) Right from 1947, the Muslims adorned the office of the highest political executive of the State. The four Prime Ministers of the State, who headed the political executive till 1965, were Muslims and the six Chief Ministers of the Congress the National Conference Governments, who followed, were also Muslims. In the Councils of Ministers, during the last four and half decades, the Hindus, Buddhists and the other minorities held an average of 26 per cent of the ministerial offices, the rest being held by the Muslims.

(c) In the various decision-making clusters of the various political party organisations, including the National Conference and the Congress, which ruled the State during the last four decades, Hindus of Kashmir were always left unrepresented.

(d) The maximal parliamentary patronage was appropriated by the Muslims of Kashmir and the Muslims in the Jammu province to the disadvantage of the Hindus;

(e) In the decision-making units of the State administration, the representation of the Hindus of Kashmir was always negligible. The decisional units of the State Government were always dominated by the Muslims of Kashmir province, excluding the Hindus completely. Almost all the Heads of the Departments in the State administration, were Muslims. An unwritten instrument of instruction operated to eliminate the Hindus from the various decision-making bodies and governed the appointment of the heads of the administrative divisions and staff agencies. An average of less than 26 per cent, including the lent officers of the Government of India, and the officers of the Indian Administrative Services, were Hindus. An average of 68 per cent higher posts in the State Government were always monopolised by the Muslims. The major public enterprises, state corporations, educational institutions of higher learning and colleges, imparting technical education in the Kashmir province, were invariably headed by the Muslims.

(f) In the administrative organisation of the State, the Hindus of Kashmir with 88 per cent literacy shared an average of 4.8 per cent of the State services, including the services in the public enterprises, corporations and government undertakings.

(g) In the services of the Central Government, including the Jammu and Kashmir Bank, the services of corporate undertakings of the Central Government, the defence services, the Beacon organisation and the communication system of the Central Government, the Kashmiri Hindus shared only 12 per cent of the available employments, whereas the Kashmiri Muslims shared 38 per cent of the available employments.

During the period 1980 to 1990, when the Muslim fundamentalist movements assumed ascendance and the secessionist forces tightened their hold on the administrative organisation of the State, the recruitment of Kashmiri Hindus to the State services and services in other corporate bodies, was reduced to an average of 1.7 per cent. Several communal government orders were struck down by the Supreme Court

of India and the High Court of the State. But ways and means were devised by the State Government to circumvent the judicial decisions to enforce the exclusion means of the Kashmiri Hindus from employments which otherwise were their due. The embargo on the recruitment of the Kashmiri Hindus, was extended to their employment in the teaching staff of the higher secondary schools, colleges and post-graduate departments of the University of Kashmir as well as the Agricultural University, the Medical College, the Engineering College and the Institute of Medical Sciences in spite of the fact that the Hindus possessed not only adequate but higher qualifications and professional excellence.

The elimination of the Hindus in Kashmir from all political processes and functions, was extended to the admission of the Hindus to educational institutions in the State, and grant of scholarships and nomination for training and higher studies outside the State. It is a little known fact that during the last forty-seven years the admissions of Kashmiri Hindus to various academic institutions, institutions of higher learning, Universities, technical colleges, including the Regional Engineering College, the Institute of Medical Sciences, Government Medical College and the University of Kashmir, were restricted to an average 8 per cent of the total admissions made every year. Incidentally, the Kashmiri Hindus constituted more than 8 per cent of the population of the Kashmir province. A bare 2 per cent of Kashmiri Hindus were awarded nominations and State grants for higher studies and trainings outside the State.

Communal Government orders were issued from time to time, implementing classification undertaken by the State Legislature to define, socially and educationally backward classes to ensure the Muslims a wider reservation for admissions to the educational institutions. Many of these communal Government orders were struck down by the High Court of the State and the Supreme Court of India. Undetered by severe censure by the highest courts of the land, the State Government refused to change its policy and the scourage of reservations continued to ravage the Hindus. A computation of the data regarding admission of Hindus to the technical colleges, training courses and post-graduate classes in Kashmir, during the last forty-seven years, shows that they were subject to gross discrimination in spite of the meritorious grades

secured in their qualifying Board and University examinations. On an average basis, only 7 per cent of Hindus were admitted to the technical colleges, though 63 per cent of the Hindu applicants possessed a first class with 60 per cent or more marks, whereas 76 per cent of the Muslim candidates were admitted to the technical colleges, though only 31 per cent of Muslim applicants possessed first class with 60 per cent or more marks in their respective qualifying examinations. In the admissions to the technical training colleges, 12 per cent of the Hindu candidates were admitted though 66 per cent of the Hindu applicants possessed a first class with 60 per cent or more marks in the qualifying examination, whereas 82 per cent of the Muslims, were admitted to the technical training colleges, though only 28 per cent of the Muslim applicants possessed first class with 60 per cent or more marks. In the admissions to the post-graduate courses, only 14 per cent of the Hindu candidates were admitted though 41 per cent of the applicants possessed first class with 60 per cent or more marks, whereas 78 per cent of Muslim candidates were admitted to the post-graduate classes, though only 14 per cent of the Muslim applicants possessed first class with 60 per cent or more marks.[16]

Apart from the wide range of the state patronage, the Muslims enjoyed, and the extensive hold they exercised over the instruments of the authority of the State Government, their interest articulation was phenomenally high. With the financial support and patronage provided by the Muslim middle class and the State Government, besides the funds received from abroad, a wide-spread network of media-means was established over the years for the interest articulation of the Muslims in the State and their political expressions. The Muslims in Kashmir owned more than 72 daily newspapers, news journals, weekly news-magazines and other periodicals. In contrast the Hindus owned, 4 newspapers, news-magazines, journals, one of which was in English and which were hardly published with the regularity and effect the newspapers owned by the Muslims were published. Evidently, the impoverished Hindu community could not sustain their publication. The State patronage was monopolised by the newspapers owned by the Muslims and the Hindus enjoyed no financial backing from any sources inside or outside the State.

The vernacular newspaper, owned by the Muslims, were mainly committed to religious propagation, promotion of Muslim separatism and communalism, the justification of the autonomy of the State and the exclusion of the State from the Indian political organisation. Most of the vernacular newspapers continued a sustained attack on the secular social organisation of India, demanding freedom for the Muslims of the State to opt for "Nizam-e-Mustafa" or the Islamic political order and their liberation from the clutches of India. Many of the newspapers preached Muslim communalism openly, a policy which earned them greater approbation of the bosses of the political parties, including the parties which were ostensibly committed to secularism, the Muslim middle class and the third generation English-educated youth, brought up under the influence of the secessionist movements. More popular of the dailies published invective against the Hindu minority, particularly, the Kashmiri Pandits. A large-scale and sustained attack, was maintained, in many of the vernacular dailies and news-magazines against the culture, the history, the social mores and tradition of the Hindus of Kashmir. The ancient history of Kashmir was denigraded as a past, which the Muslims of Kashmir refused to own.

No restraints were ever imposed on the publication of these newspapers; even secularism were not invoked against them. Many of them preached secession of the State from India openly and with candid frankness. But their freedom to preach treason was never questioned.

VIII
ECONOMICS OF MILITANCY

The second aspect of the disinformation campaign about the militant violence was pertaining to the alleged economic deprivations the Muslims faced in the State. The local political leadership, specially the leadership of the National Conference and the splinters of the Muslims United Front, a section of the Muslim leadership of the Congress, the left parties and some of the constituents of the Janata Dal, blamed the Hindus of having appropriated economic advantage at the cost of the Muslim majority. The Muslims, they alleged, were compelled by poverty and economic depression to resort to armed resistance against India.

The total population of the State according to Census of India, conducted in 1981, was 59,27,389 of which 19,30,448 were Hindus, 38,43,451 were Muslims, 1,33,675 were Sikhs, 69,706 were Buddhists, 1,576 Jains, and 2,481 Christians. The population figures, quoted above did not include the two and a half lakh Hindus and Sikhs, who migrated to Jammu and Kashmir in 1947, and the Hindus and Sikhs who were displaced from the territories of the State occupied by Pakistan and who lived in the State ever since. These people are still awaiting settlement in the State.

The total population of the Hindus according to the Census of 1981, formed 32.4 per cent of the total population of the State. The population of Sikhs formed 2.1 per cent of the population of the State and the population of Buddhists constituted 1.1 per cent of the population of the State. The population of the Hindu and Sikh Sharnarthis, refugees, still awaiting settlement, constituted 4.1 per cent of the population of the State. Added together, the population of the Hindus, the Sikhs and the Buddhists in the State, constituted 39.7 per cent of the population of the State.

The Jammu and Kashmir was, in 1990, a prosperous State, which in terms of per capita income was placed fourth among the Indian States. There was a continuous rise in domestic product of the State in terms of crores of rupees from 249.59 to 458.10 at constant price (1970-71) in 1985-86 and the growth registered in this behalf at current price in 1971-76, rose from Rs. 249.59 crores to 1,479.49 crores.

The per-capita growth registered between 1970-71 to 1985-86 was from Rs 548 to Rs 2,204, at current price and Rs 548 to Rs 683 at constant price of 1970-71. The prosperity of the Muslims accounted for a greater share in the figures cited above due to more favourable allocation of financial resources for the Kashmir division, varying between 65 to 69 per cent as compared to 35 to 31 per cent allocated to the two divisions of Jammu and Ladakh.

The widespread propaganda campaign about the so-called economic deprivation of the Muslims of Kashmir, was designed to conceal the real import and objectives of the militancy and was aimed to

mislead the Indian public opinion in order to provide tactical advantage to the secessionist forces, working against the unity of the country. The Muslims in the province were, a prosperous community. The Muslims of Kashmir dominated the economic organisation of the State, as shown by the following facts:

(i) The Muslims in Kashmir owned 97.4 per cent of the agricultural land, leaving 2.6 per cent of agricultural land in the ownership of the Hindus and the other minorities, who together constituted about 11 per cent population of the province.

(ii) The Muslims owned 96 per cent of the fruit orchard acerage in the Kashmir province, whereas the Hindus owned only 2.8 per cent of the fruit orchards.

(iii) The Muslims in Kashmir owned 98.7 per cent average of Kareva highland, growing saffron, whereas the Hindus owned 0.03 per cent land yielding saffron.

(iv) The export of dry fruit; almond, and walnut, was a monopoly of the Muslims in Kashmir, the Hindus having negligible or no share in the export of dry fruit from Kashmir.

(v) The export of precious walnut and willow-wood, was wholly a monopoly of the Muslims, the Hindus having no share in it.

(vi) The employment of the Muslims in the Horticulture industry approximated to 8 lakhs of people, working on 4,81,000 orchard holdings. The employment of Hindus in the Horticulture industry was less than 0.5 per cent.

(vii) Of the industries using electric power in Kashmir province, 98.9 per cent were owned by the Muslims and only 0.02 per cent were owned by the Hindus.

(viii) The handicrafts and handloom industry of Kashmir division was almost wholly owned by the Muslims and provided employment to 91,941 persons, among whom only 0.4 per cent were Hindus.

(ix) The membership of the handicrafts and handloom cooperative societies in 1985-86, the years, when the Muslim fundamentalists were getting militarised, was 17,776, of which only 0.3 per cent belonged to the Hindus in Kashmir.

(x) In 1985-86, the number of small-scale industries and industrial units registered with the Directorate of Industries in Kashmir province was 46,293. The number of units registered in the name of the Hindus of Kashmir estimated to only 0.01 per cent. 98.7 per cent of the industrial units were registered in the name of the Kashmiri Muslims.

(xi) The Khadi and village industries registered under Khadi and Village Industries Board, provided employment to 28,110 persons. 98.8 per cent of the employees were Muslims.

(xii) The road transport in the State, the primary means of communication in the absence of any railways, was owned by Muslim transporters and transport companies, with the Sikhs having a marginal 4.2 per cent share among them. The Hindus of Kashmir had a negligible share in the transport organisation of the State.

(xiii) According to the statistics and figures collected from the Government sources for the years 1985-86, the State Transport Corporation employed 6,434 persons of which the Kashmiri Hindus accounted for 0.8 per cent.

(xiv) According to the figures available for the year 1985-86, from the government sources, the entire boat transport in the State was monopolised by the Kashmiri Muslims. The number of the various types of boats, was as follows:

Type of Boats	*Number*	*Number of persons employed*
(a) Tourist House Boats	825	3300
(b) Passenger Boats	1125	2304
(c) Carriage Boats	685	1037
(d) Fishing Boats	480	960
(e) Passenger House Boats (Tourist Doonga)	275	825
(f) Taxi boat	785	1570
Total	4232	9996

The entire fleet of the boats of various types, listed above, was owned by the Muslims. The fleet included the high cost luxury house boats, which had considerable commercial value.

(xv) The hotel industry a highly lucrative industry in Kashmir, was always a closed preserve of the Muslims of Kashmir. The Muslims owned about 96 per cent of the hotel property in Kashmir, the Hindus owned only 2.2 per cent of the hotel property in Kashmir.

(xvi) Ninty-four per cent of the State subsidy paid on horticulture, agriculture, agricultural implements, fertilisers, pesticides etc. was appropriated by the Muslims in Kashmir with 2.4 per cent and less of the subsidies received by the Hindus.

(xvii) The Muslims appropriated the whole of the State subsidies on industrial loans, exports, self-employment schemes etc. The share of the Hindus of Kashmir in such subsidies was negligible; less than 0.1 per cent.

(xviii) The share of the Hindus in the industrial loans, provided by the State Government, the loans on self-employment schemes, loans on small-scale and handicraft industrial units and the lands allotted for the establishment of such industries, was negligible, less than 0.1 per cent.

(xix) The Hindus were almost excluded from contracts and public works undertaken by the Government and were given, on an average, a share of 4 per cent in the works undertaken by the State.

(xx) The share of the Hindus in the exploitation of forest products till the forests were nationalised in 1979, was 6.2 per cent.

(xxi) The licensing for quarrying, mining of marble brick-kilns, was a monopoly of the Muslims.

(xxii) The manufacture and export of carpets of Kashmir was a monopoly of the Muslims of Kashmir.

(xxiii) The manufacture and export of shawls of Kashmir was a monopoly of the Kashmiri Muslims.[17]

The Muslims in Jammu and Kashmir were never the oppressed masses in the State. In the Dogra regime, they formed an important part of the Dogra ruling class. After the accession of the State to India, they ruled the State in the name of Islam, exercised unrestricted authority, and power, replaced the middle class, the Dogras had forged in the State, by a formidable Muslim middle class, to provide an economic base for the Muslimisation of the State. After the communalisation of the government and society was accomplished, they demanded the separation of the State from India, as a condition for the realisation of their Muslim destiny. The militant violence, which struck the State in 1989, marked the culmination of the Muslim struggle for the secessation of the State from India and its unification with the Muslim Commonwealth of Pakistan.

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Chapter III

ETHNIC CLEANSING

Notwithstanding the international guarantees against genocide and ethnic cleansing, envisaged by the Declaration of Human Rights and Convention on Prevention and Punishment of Genocide, and terrorist regimes in Jammu and Kashmir, carried on a concerted military campaign against the Hindus in Kashmir and the Muslim majority districts of the Jammu province to: (a) exterminate them physically and (b) force them to migrate from their home and land of their birth. The ethnic extermination of Hindus was aimed to eliminate resistance to the terrorist operations in Kashmir. The Hindus had stubbornly opposed the Muslim secessionist movement, and their resistance to the Muslim militancy, could be useful to the Indian security forces in their counter operations. The campaign to eliminate the Hindus was put into operation with ruthless abandon and had the Hindus not sensed the danger, while the escape routes were still open, many more thousands of them would have been massacred.

A propaganda campaign was mounted against the Hindus accusing them of conspiracy to undo the freedom of the Muslims in the State, in collaboration with the Indian government. They were blamed of having treacherously sabotaged the Muslim endeavour to achieve the unification of the State with Pakistan in 1947, in connivance with the leaders of the National Conference and with the help of Maharaja Hari Singh. They were accused of having opposed the Muslim resistance against India which the Plebiscite Front had led. The condemnation, to which the Hindus were subjected did not end with the dissolution of the Plebiscite Front in 1975. They continued to be charged of being the search enemies of the Muslim nation of Kashmir, a threat to the Muslim religion and its political solidarity and the motive force behind

all secular processes in the State which obstructed the Muslim struggle for Pakistan, of the accusations levelled against the Hindus, the following were more serious:[1]

(i) that the Hindus misled the leadership of the Muslim Conference in 1939, and enticed them to abandon the Muslim movement and accept secularism as the basis of the Muslim struggle against the Dogra rule;

(ii) that the Hindus supported the accession of the State to India and actively worked to consolidate the Indian hold over the Muslims in the State;

(iii) that the Hindus sabotaged the secessionist movement aimed to disengage the State from India;

(iv) that the Hindus supported the merger of the State in the constitutional organisation of India;

(v) that the Hindus were severely opposed to Muslim precedence; and

(vi) that the Hindus did not accept the primacy of Islam and obstructed the Muslimisation of the society and Government of the State.

The accusations were not unfounded. The Hindus in Kashmir fought for Indian unity and freedom from foreign rule, shoulder to shoulder with the people in the Indian States. The first ever held conference of the Indian States people, convened in 1927, was presided over by a fire-brand Kashmiri Pandit, Shankar Lal Kaul, who had left Kashmir after having been removed from the State services on the advice of the British Resident. Kaul demanded the right of the States People to repudiate the princely order and called for a united struggle of the people in the Indian States and the Indian Provinces against the British rule. A decade after, the All-India States Peoples Conference, in its session at Ludhiana, reiterated the demand Kaul had made for the repudiation of the Paramountcy and the end of the princely rule in the Indian States.[2]

Pandit Dwarika Nath Kachroo, a veteran Kashmiri Pandit freedom fighter and a close associate of Jawaharlal Nehru, served the States peoples movement, as the Security General of the States Peoples

Conference, during the most formative years of its development. He was arrested in Kashmir along with Nehru in the 'Quit Kashmir' movement in 1946. Later, Kachroo represented the All-India States Peoples Conference in the historic meeting of the Working Committee of the National Conference, held in October 1947, in which the Conference decided unanimously to support the accession of the State to India.[3]

The Hindus in the State extended their support to the Indian national movement right from its revolutionary days and demonstrated their fraternal solidarity with the people of India in the civil disobedience, which followed the Rawlatt legislation in 1919,[4] the Khilafat Movement in 1921,[5] and the Salt Satyagraha in 1931. Many of them, including Pandit Kashyap Bandhu, joined the revolutionary underground in India which actually shook the roots of the British empire.

The Muslims of Kashmir, inspired by Pan-Islamism, which pervaded the Muslim outlook in India till the British left, adopted an attitude of active opposition to the Indian struggle. The Muslims in the State never lost sight of the identity of their interests with the British and spared no efforts to help them to undo the Dogras and provide them support in their endeavour to smother the liberation movement in India. They strongly opposed the State-subject movement led by the Hindus, which was mainly aimed to fore-stall any attempt the British made to acquire land in the State. In fact, the Muslims in their Memorial, submitted to Maharaja Hari Singh in the aftermath of the Muslim agitation of 1931,[6] blamed the State Government of having connived with the Hindus in organising demonstrations in the State in support of the Congress movement, which, they alleged, went against their loyalty to the British empire.

In truth, it was the Hindu community in Kashmir which by its exhibition of tolerance and forebearance and a long campaign of education in secular values, laid the foundations of a secular, non-partisan and non-communal movement in the State. The declaration of the National Demand, which was issued by Hindus and Muslim leaders of Kashmir in 1938, and which in the later days, formed the basic groundwork of the movement for self-government in the State, was drafted by the Kashmiri Hindu leaders.[7] The Declaration of National

Demand became the basis of the emergence of the National Conference in 1939.

The Muslim Conference, which spearheaded the Muslim agitation against the Dogra rule in the State, was converted into a secular organisation, the National Conference in 1939, with active collaboration and support of the Hindus in Kashmir. The Hindus joined the ranks of the National Conference on the terms which the Muslim leaders laid down. The Muslim leaders, who did not join the National Conference broke away to continue their struggle for the Muslims and aligned themselves with the Muslim League movement for Pakistan. They accused the Hindus of Kashmir, particularly the Kashmiri Pandits, of having divided the Muslims of the State on the instigation of the Congress and other Hindu leaders of India. This accusation was never washed away. The ideologues of the Muslim terrorism repeated the indictment.

The Hindus allowed the escheat of their landed estates, the confiscation of their property, and their exclusion from the administration of the State and accepted political change which sought its legitimacy in the primacy of Islam, to provide the Government of India support in the United Nations, where the Indian representatives were seeking hard to prove more Muslim than the Muslim nation of Pakistan, to justify the accession of the State to India. The Kashmiri Pandits went as far as to applaud the Long harrangues delivered by Sheikh Mohammad Abdullah in the Security Council, which in substance, embodied the Muslim claims to the nationhood of Kashmir on the basis of the Muslim religious injunction.

The Hindus bore the first impact of the upheaval which followed the dismissal of Sheikh Mohammad Abdullah in 1953, and in fact, they took to the streets in support of the second Interim Government, demonstrating their solidarity with the Government of India. For twenty-two years, they fought with dogged resolution, the movement for plebiscite, which Sheikh Mohammad Abdullah and the Plebiscite Front led. After the Accord in 1975, they found themselves arraigned against the Pan-Islamic fundamentalism which assumed the leadership of the secessionist movement in the State after the Plebiscite Front was dissolved.

The Kashmiri Hindus earned the heaviest Muslim censure for their avowed opposition to the exclusion of the State from the constitutional organisation of India. They were openly branded the enemies of the Muslim identity of the State. Indeed, the Hindus all over the State, including the Sikhs and the Buddhists, did not approve of the exclusion of the State from the constitutional organisation of India. They implored with Nehru and the other Indian leaders not to allow the isolation of the State from the mainstream of the Indian political life. While a widespread agitation against the exclusion of the State from the constitutional organisation of India was launched by the Hindus in Jammu,[8] the Hindus in Kashmir sent several communications to the Government of India, pointing out the dangers in excluding the State from the Indian political organisation and the damage that would be done to the evolution of integrated and secular political institutions in the State. The National Conference, Plebiscite Front and the other Muslim organisations denounced the Hindus as the fifth column of Hindu communalists of India, who sought to end the Muslim identity of the State by seeking the abrogation of Article 370.

Impoverished by their exclusion from the economic organisation of the State and their elimination from all the political processes, the Hindus lost the initiative and became the hostages to what was later called "the Muslim identity of Jammu and Kashmir." They were subject to religious persecution, their temples were desecrated; many of their temples disappeared completely, among them the ancient temple of Vishnu, located in the flank of Jama Masjid in Srinagar. As the secessionist forces gained the upper hand, pressure was mounted upon them and thousands of them abandoned their homes. No wonder that during the last four decades about two lakhs of Kashmiri Hindus quietly migrated to the other parts of the country.

I
THE HOLOCAUST

Within the broad scheme of the militarised secessionist movement in the State, the elimination of Hindus from Kashmir had obvious tactical

advantages for the secessionist forces. These were:

(i) The elimination of the Hindus would destroy the groundwork of secular institutionalisation in the State, which would render all ideological commitments to the secular unity of India utterly redundant.

(ii) The liquidation of the Hindus and their exodus would destroy the credibility of the Government of India among the Muslims of Kashmir.

(iii) The elimination of the Hindus would break the psychological contact, a large section of the Muslims, still continued to have with the Indian support-structures in the State.

(iv) After having flushed the Hindus from the Valley, the Muslim psyche could be easily exposed to more persuasive fundamentalist indoctrination.

(v) The elimination of Hindus would ensure the rupture of important communication and feedback channels of the Government of India, which the Hindus always endeavoured to keep open.

(vi) The helplessness of the uprooted Hindu masses, would break the resolve of the Hindus in India, as well as the government of India to hold Kashmir any further.

(vii) The exile of the Hindus would mark the first step towards the conversion of Jammu and Kashmir into a Muslim State and its eventual separation from India. By and large, the militants succeeded in their broad designs in eliminating the Hindus in Kashmir. They destroyed the traditional population balances which formed the bases of the coordinate plurality of the State, replacing it by a communal identity of the Muslims, which found its legitimacy in Islamic fundamentalism. The psychological contact which had always been vital to the community relations in Kashmir as well as the support-structures of India, was dissolved and the Muslims, who did not support the secession of the State, gave way after they saw the apathy with which the Government of India watched the death and destruction of the Hindus.

In utter irresponsibility and abject surrender to secessionism, the Indian leaders ran from pillar to post making wild offers to the Muslims, the militants, the subversives, whoever came their way, flinging to wind, their commitments to Gandhian values, communal harmony, secularism, socialism, democratic process and national integration. A delegation of the political parties, in which were included the Indian leaders of such eminence like Devi Lal and Rajiv Gandhi, and the dozens of the Left Front, went to Srinagar to be greeted by the worst ever invective heard by the most ordinary Indian citizen in Kashmir.[9]

The terrorist organisations carried out systematic operations to massacre the Hindus and flush them out of the Kashmir Valley.[10] As the death toll of the Hindus increased, they began to evacuate from the Valley in large numbers.

II
GENOCIDE OF HINDUS

The rumblings of the storm, which engulfed the Hindus in Kashmir were heard, long before it burst. Right from the beginning of the year, 1989, the non-Kashmiri Pandit Hindus in Kashmir, professionally a trading community, were served with notices to quit Kashmir because they were Indian Hindus, and had acquired interests which impinged upon the rights of the Muslims in the Valley. The trading interests all such Hindus had, were nominal and did not form even one per cent of the trade and commerce, the Muslims in Kashmir controlled. About thirty thousand in number, most of these Hindus were petty shopkeepers, professionals, technicians, forwarding agents and business executives. They had no conflict of interests with the Muslim middle class, of which they did not even form a fringe. The threats administered to them were mainly the part of a plan to dislodge them from Kashmir and since they were not Kashmiri Pandits, it was easier to flush them out.

The threats were followed by bomb-blasts in their homes and business establishments. In several townships, many of their shops and residential houses were set on fire. Rumours were spread and many reports appeared in the local vernacular press in Srinagar that the non-Kashmiri Pandit Hindus were plotting against the Muslims in the State.

and were recruiting Hindu Youth to the ranks of the Rashtriya Swayam Sevak Sangh and Shiv Sena. The allegations were baseless, because the non-Kashmiri Pandit Hindus formed an apolitical microscopic section of the Hindu society in Kashmir. They had during the entire period of turmoil after 1947, never been involved, unlike the other Kashmiri Hindus, in any political crisis in the State and had kept scrupulously aloof from the political developments in the State. Their number was so infinitesimally small that they could never dare to do any thing which earned them the hostility of the Muslims. Slowly the threats began to have their effect and many of the non-Kashmiri Pandit Hindus sold their residential houses and shops at thrown-away prices to eagerly waiting Muslims who were provided funds to purchase the property by Muslim financial agencies and several other Muslim organisations in the State. By the time the militants opened up their main attack on the Kashmiri Pandits, the non-Kashmiri Pandit Hindus had already been dislodged from the Valley.

While the militants maintained pressure on the non-Kashmiri Pandit Hindus, they opened up their assault on the Kashmiri Pandits. The main militant organisations intensified their campaign of hatred and villification, which the Jamait-Islami, Jamait-ul-Tulba, the People's League and the Muslim United Front and its various factions had already been carrying on against them. The secessionist organisations used the Muslim mosques for mass propaganda and called for a 'Jehad' against the traitors who opposed the secessionist movement in the State and served the Indian interests. Claiming to fight for the liberation of the State from Indian imperialism, they called upon the Kashmiri Pandits, the Hindus and other minorities to join their struggle, promising them protection to which they would be entitled as a minority, in a Muslim State governed in accordance with the precept and precedent of Islam.

In the vilification campaign, the entire Urdu press, controlled and financed by the Muslim middle class factions, ideologically committed to the disengagement of the State from India and the pro-Pakistan financial agencies and organisations joined to denounce all those people who did not support the militants as the traitors to the Muslim nation of Kashmir and its freedom from the Indian yoke. The Urdu press,

largely blamed the Hindus of having usurped the right of the Muslims to opt for Pakistan and having helped India to annex it by fraud and force. Several of the Urdu dailies and weeklies, published materials derogatory to the Hindus, full of invective denegrading their history and culture. Most of these outbursts were hysteric in their denunciation of the part the Kashmiri Hindus had played in neutralising the struggle of the Muslims for self-determination. Throughout the summer of 1989, many dailies and weeklies carried notices and warnings addressed to the people who supported secularism and Indian unity and the accession of the State to India, to prepare for the day of their reckoning.[12]

While the propaganda campaign against the Hindus intensified, various militant organisations began to administer threats to them, by serving them with notices asking them to stop their anti-Muslim activities or to leave the Valley. Most of the notices were delivered to them in the darker hours of the night or pasted on their compound doors or sometimes sent by mail. In the initial phases, most of the Kashmiri Hindus maintained scrupulous silence over the threats they received, partly because they were hardly prepared to face a situation in which they were *pit* against the Muslims; partly because they expected little help from the Muslim administration of the State, which was as hostile to them as the militants, and partly because they still believed that the Indian security organisation was strong enough to deal with any threat, the Muslim extremists posed. Many of the Kashmiri Pandits, however, conveyed their fears to the State Governor and the Government of India. Alarm was also raised by some national newspapers about the menacing strength, the terrorists were fast gathering. The State administration took no note of the psychology of fear, militancy had created and, instead castigated many well meaning citizens for over-reacting to a situation which did not deserve much attention.[13]

At several places the business establishments, temples and residential quarters of the Kashmiri Hindus were subject to attack. In the more remote villages, where the population of the Hindus was sparse, many temples were desecrated and the adjoining land belonging to them forcible occupied.[14] In many places, the Kashmiri Hindus were counselled to abandon their religion and join Islam. Dumb-founded, the poor folk endured the insults and injuries with fortitude. Inside their

conscience, however, they were hurt and feelings began to grow among them that they could no longer live safely with their faith, in their ancestral land and the choice before them was conversion to Islam or unbearable harassment and death.

In many villages, the terrorists exacted large sums of money from the Hindus in the form of taxes, which the heathen were bound to pay for their protection in a Muslim State. Hundreds of Kashmiri Hindus were also confronted with the charge of having acted against the cause of the Muslims. Many of them quietly left their homes and after hiding themselves for sometime, managed to escape the dragnet of death. Many of them paid for their freedom, offering, huge ransom, before they were allowed to leave. Some of them, however, failed to make good their escape and lost their lives.

III
THE EXODUS

The first blow which fell on the Kashmiri Hindus was the assassination of Pandit Tika Lal Taploo, the member of the National Executive of the Bhartiya Janata Party. Taploo was widely respected among the Hindus in Kashmir and though Kashmiri Hindus held diverse views on electoral politics, they venerated him as an indefatigable champion of their cause. He was assassinated by terrorists outside his house in Srinagar, while he was on his way to the local court where he practiced as a lawyer.

Tika Lal Taploo was given a tearful farewell by thousands of Kashmiri Hindus who accompanied his funeral procession. The Kashmiri Hindus had given a call for a bandh that day. The Hindu shops, schools and office-establishments were closed, but the Muslims went on their work as usual. While the funeral procession, carrying Taploo on his last journey, wound its way to the cremation ground through the streets of Srinagar, stones were pelted on it. The next day, the Jammu and Kashmir Liberation Front owned the responsibility of killing Taploo. He was proclaimed an enemy of the freedom of the Muslims of the State.

Taploo's death was followed by the broad day murder of the former Sessions Judge, Pandit Nila Kant Ganjoo, who had sentenced

Maqbool Bhat, a founder member of the Jammu and Kashmir Libera-tion Front, to death. Bhat was convicted of murder and executed. Gan-joo was killed in the busy market of Hari Singh High Street in Srinagar and his body lay unclaimed for an hour. Gunmen, who had assassinated him, prowled round the place till the police arrived.[15]

A few days after, terrorists gunned down another prominent Kashmiri Hindu leader, Prem Nath Bhat. Bhat too, was a lawyer and a columnist and had returned to his native town of Anantna, after he had left Kashmir due to threats and warnings, he had received from the militants earlier.

After Bhat's death, hell broks loose in the Valley. Long hit lists were circulated in the villages and the townships of the Valley, indict-ing the Hindus for 'Mukhbiri': complicity with the Indian State against the liberation movement of the Muslims. Most of the Hindus con-demned to death, escaped to Jammu, along with their families, usually during the darkness of the night. Those, who ignored the warning, paid with their lives.

A deliberately designed, two-pronged plan to dislodge the Hindus from Kashmir was surruptitiously put into operation by the various terrorist organisations. The hit lists were accompanied by rumours about the Kashmiri Hindus, who were found by the militants to have been involved in 'Mukhbiri' or complicity with the Government of India. The rumour were deadly, mainly because they made life uncer-tain. To back up the effect of the hit lists and rumours, pressure was brought to bear upon the Hindus by several other subtler methods. Many Hindus, were counselled by their neighbours, village elders, and even senior Jamait-Islami leaders to leave the Valley to save their lives. In many cases, the advice was genuine, but in general, the cam-paign of counselling was a part of the strategy to instil fear in the Kashmiri Hindus, so that they took to their heels. In a number of towns and villages, the local people issued threats from the mosques and spread rumours charging the Hindus of conspiracy and espionage, in order to break their resolve to stay behind. Larger number of prominent men among the Hindus, social workers, leaders and intellectuals, were listed for death. Most of them escaped from the Valley secretly, to avoid suspicion and interception.

In the rural areas of the valley, carries of the secessionist organisations and their supporters, almost of every shade and commitment did not hide their hostility towards the Hindus. At many places, even in Srinagar and the other townships, Hindus were openly charged of espionage for India. The indictment spelt death. At many places, the Kashmiri Hindus were assured protection if they embraced Islam. The more enthusiastic Muslim elements, mainly supported by Jamait-Islami, used intimidation and pressure to persuade the Hindus to abandon their faith. In one village, in District Anantnag, a village elder approached a Hindu women, a widow, who lived with her three daughters in the neighbourhood, and assured her that there was no danger to her life or the life of her daughters. As the poor woman expressed her gratefulness, the patriarch offered to marry her three daughters to his three sons, which, he said, would end the insecurity, her family faced. The helpless woman recoiled in horror. Depending on her instinct, the woman left her home at midnight and along with her daughters, trudged on foot to a nearby village, where her brother lived. The next day she reached Jammu.

The White Paper on Kashmir, issued by the Joint Human Rights Committee, noted:

The terrorist organisations carried out systematic operations to massacre the Hindus and flush them out of the Kashmir Valley. As the death toll of the Hindus increased, they began to evacuate from the Valley in large numbers. The State Government reacted to the elimination of the Hindus with utter passivity and indifference. The Janata Dal Government lacked the will to deal with terrorist violence. With the Home Department of the Government of India, placed under a Kashmiri Muslim, who too was committed to the precedence of the Muslim majority in the State, and who carried out the behests of the powerful Muslim lobbies in the Janata Dal, the State Government could not deal with the terrorist violence with any firmness. The ludicrous drama of the kidnapping of Rubiya Sayeed, the daughter of the Home Minister and the consequent breakdown of the Central Government, had left little moral strength with the State Government to face the terrorist

challenge. The brief spell during which Jagmohan tried to retrieve the situation, was a half-hearted endeavour, which ultimately ended in a fiasco.

IV
DARKNESS AT NOON

A widespread and vicious campaign of disinformation was launched against the Hindus of Kashmir with the outset of militancy. The secularists, the leftists and the human rights activists, who had, during the four decades of Indian freedom laboured for different commitments, and the renegades and mercenaries who had served the British with equal servility, levelled false accusations against the Hindus. Concerted efforts were made to shift the blame from where it belonged. A propaganda war was unleashed against the Hindus in Kashmir to prove that:

(i) the Muslims in Jammu and Kashmir bore no ill-will against their Hindu brotheren, whom they had protected from the invading tribesmen of Pakistan in 1947, and whom they had shown the utmost of tolerance and forbearance in spite of the repeated provocations they had received from the Hindu communalist inside the State and in India;

(ii) the Muslims did not pose any threat to the Hindus in Kashmir and the intensity of the violence by the Muslim militant organisations and the deaths and assassinations of the Hindus, were only incidental to the crusade for the liberation of the Muslims;

(iii) the three lakhs of the Hindus in Kashmir, one and all, had entered into a secret conspiracy with Jagmohan, to evacuate the valley to enable the Governor and the Indian forces to obliterate the Muslims;

(iv) the Hindus in Kashmir had evacuated from Kashmir in search of "greener pastures in India" and better prospects;

(v) the Hindus in Kashmir had evacuated because of their "threat perceptions" which did not necessarily correspond to the "real threat" posed to their life and security.

The whole vilification campaign was motivated propaganda, intended to provide cover to the communal, fundamentalist and separatist outlook of the Muslims in the only Muslim majority State in India. The Hindus, not only in Kashmir, but all over the Jammu and Kashmir State had been used as scapegoats for the failure of the Indian leaders to contain Muslim communalism and separatism in the State. In 1947, the Muslims sued for peace with the invading hordes of Pakistan, which descended on the Valley and the only resistance, the invading armies faced, was offered by the dilapidated elements of the Dogra army, which fought the advancing enemy with their bare teeth. Thirty-eight thousand Hindus and Sikhs were massacred by the invaders in the territories overrun by them. Twelve thousand Hindus including Kashmiri Pandits, perished in and around the town of Rajouri alone. It is little known that the Muslim troops of the Dogra army, almost half of its strength, deserted and fraternised with the enemy and put themselves in the vanguard of the invasion.

Nor did the Muslims show any consideration for the secular values which Nehru argued with them, formed the basis of the Indian Constitution. The exclusion of the State from the Indian constitutional organisation was foisted on the Congress by the leadership of the National Conference, to Muslimise the State, and covert it into a separate Muslim polity, which India undertook to protect from external attack. As the conflict between the secular organisation of Indian democracy and the Muslimisation of the State came to a head, the National Conference leadership joined Pakistan to demand a plebiscite.[16] The movement for plebiscite continued for twenty-two years till 1975. The Hindus in the State, more specifically in Kashmir bore the brunt of the Muslim separatism all along the years, the movement for plebiscite raged in the State. With the Congress-Front accord in 1975, the Congress leaders handed over the whip to the Front leaders, who used it to flay the Hindus and those who had opposed them in their fight against India.[17] After 1975, the recruitment of the Hindus in Kashmir to the services in the State, was reduced to an average of 1.8 per cent, the rest being reserved for the Muslims. The traditional tolerance of the Muslim majority in the State had sharper edges, which always cut

the Hindus deeper. An unwritten covenant operated to dislodge the Hindus from their homes, their lands and their professions. In 1990, the process of the ethnic cleansing of the Hindus was completed.

The Kashmiri Hindus and Jagmohan, along with the Indian Security Forces were the victims of a conspiracy which had international ramifications. Who was where in this conspiracy will be revealed by future history? It is inconceivable that around three lakhs of people would have lifted themselves out of their homes, leaving behind their property and lands, means of livelihood and their temples, on the bidding of Jagmohan, paid thousands of rupees for being ferried across the Bannihal, and landed in the wilderness of exile. The exodus spread over a year from December 1989, to the end of 1990. The Congress leaders, runaway renegrades among them, the neo-left leaders and the free market reformists were so blinded by their sense of self-righteousness, that they refused to pause for just a while and ponder on whether a whole community would have suddenly run wild and flung itself into the oblivion.

Hindus in Kashmir constituted a self-contained class of people who lived at low levels of income compared to the lowest fringes of the powerful and affluent Muslim middle class.

Most of them owned their houses. Most of the houses had small or large compounds which were traditionally considered to be a necessity in Kashmir. In the villages as well, where they mostly lived on small agricultural holdings and orchards, they owned their own houses, kitchen gardens, rared livestock, mainly cattle, and generally earned additional income from professional services, like dispensing medicine, teaching, book-keeping etc. A sizeable section of the community worked as wage-earners, domestic servants, and errand-boys.

The Hindus of Kashmir had a rich cultural heritage. They possessed numerous religious endowments and shrines and ancient temples built during the reign of the Hindu monarchs. There were many famous centres of religious pilgrimage like the Amar Nath Cave, Kheer Bhawani shrine on the outskirts of the Srinagar city, the Sun Temple of Martand at Mattan, the Sharika Temple on the flank of the Hari Parvat hill and the Gangabal shrine, considered to be as sacred by the Hindus in Kashmir, as the Ganges. The religious endowments were

once rich and prosperous and held in their possession, Maufi and Mukarari lands, enough to meet their expenses. Much of the land attached to the temple shrines and religious endowments was nibbled away by the Muslim partisans with the connivance of the State administration under the cover of the land reform legislation which exempted religious endowments from its operation.

Like the other traditions bound, endogamous and native peoples, the Hindus, with an incredibly long history, extending into pre-historic, proto-Aryans era of latter stone age culture, formed an inseparable part of the cultural identity of Kashmir and its personality. Because of their endocrine cultural patterns, local ritual-structures, blended with the Vedic religious precept and practice, and their pride in Sanskrit civilization, they had a deep sense of attachment and belonging to their land, which they addressed in their worship as the "Mother, who had given them birth". How should they have suddenly torn themselves from their racial moorings, abandoned their homes and their temples and quit the temperate and salubrious climate, in which generations of their ancestors had lived, to throw themselves on the charity of the world in the arid tropics of Jammu and beyond? How should they have fallen so low in their own esteem that they should have walked out of their homes on the bidding of Jagmohan, who sought their evacuation to clear the decks for an onslaught on the Muslims?

The Hindus were scattered all over the valley and it is unbelievable that in the chaos, which engulfed the valley in January 1990, with the Muslim crusaders having spread all over, Jagmohan's spies could have moved around to organise the exodus of the Hindus. The stark truth is that, as Jagmohan flew into Kashmir a day after he was sworn in as the Governor of the State, hundreds of vehicles, carrying the Hindu fugitives, were speeding down the tortuous Banihal road towards Jammu.

The Hindus loved their land, perhaps with a greater spiritual commitment than the Muslims, because they were not importers and they had lived in the valley, generation after generation, over thousands of years. They had a greater sense of national belonging, with its roots in the geography of their land. They were no conquerors; they had risen from their soil. A survey based upon stratified sampling, struc-

tured questionnaires and interviews was conducted to ascertain the circumstances in which the Hindu population in Kashmir evacuated.[18] Fifty-six per cent of the respondents living in towns, thirty-eight per cent living in the villages and twelve per cent living in the remote villages, stated that they were marked for death and according to the information they received, they had a day and a half to make good their excape. Thirty-eight per cent of the respondents living in the towns, 13 per cent respondents living in the villages and 12 per cent respondents living in the remote villages, stated that they received information that their names figured in the hit-lists of various terrorists organisations. Forty-three per cent of the respondents living in the towns, 28 per cent respondents living in villages, and 22 per cent living in remote villages, stated that they heard rumours of their names having figured in the hit-list of the various terrorist organisations. Sixty-eight per cent respondents living in the towns, 42 per cent respondents living in the villages and 8 per cent respondents living in the remote villages stated that they received threats from various terrorist organisations through emissaries. Six per cent of the respondents living in the towns and 2 per cent respondents living in villages stated that they received instructions to appear before Muslim tribunals after Friday prayers, in the local mosques, to explain their anti-struggle conduct. Less than one per cent of the respondents accepted that they appeared before the tribunals. The rest of the respondents, so summoned, left their localities before the appointed date for hearing. A scholar of sociology and history, resident of Srinagar city, stated in an interview; "I was already informed that a Naka, a ring had been thrown around the locality where I lived, with the intention to gun me down, whenever I came out of my house. I did not stir out, and as the day wore by, fear gripped me that with the fall of the night, the terrorists would raid my house. As the night set in, I sneaked out of my house, wrapped in a blanket. It had begun to drizzle and I was perhaps, able to give a slip to the people who possibly had abandoned their watch. The information that I would be waylaid was secretly communicated to me by a young lad of my own community. I left my home and took refuge at a fairly distant

place in the house of a relative. The next day the militants sent a delegation of the local mosque committee to my home. Most of the men in the delegation were known to my people. In polite words the members of the delegation told my family members that reports about my anti-struggle activities had reached the militant forces, and therefore, it would be right for me to appear before the Muslim congregation on Friday, where my explanation would be considered sympathetically and the members of the delegation would ensure that no harm was done to me. My family members assured the delegation that I would appear before the congregation for judgment. During the ensuing night, my people quietly shifted out of the house with the least little belongings they could carry in a small vehicle, hired at an exorbitant price. The vehicle reached the outskirts of Srinagar in the early hours of morning, where I had been instructed to wait. No one spoke a word. The vehicle sped away and by the onset of the dawn, the vehicle was racing up the hill slopes of Banihal."

There is enough ground to believe that the danger of widespread massacre of Hindus, particularly the Kashmiri Pandits, was imminent and a single false step would have cost them thousands of their lives and perhaps, the honour of their women. Thirty-eight per cent of the respondents living in the towns, 46 per cent of the respondents living in villages and 71 per cent respondents living in remote villages, stated that threats were communicated to them through their Muslim neighbours and acquaintances. Forty-two per cent of the respondents living in the towns, 69 per cent of the respondents living in villages and 68 per cent of the respondents living in remote villages stated that secret intelligence reached them that they had been accused of espionage for India. Most of them stated that they knew that the accusation of "Mukhbiri" or espionage was the warrant of death. Sixty-one per cent of the respondents, who received information of being accused of "Mukhbiri", stated that they left their homes in the darkness of the night to avoid interception. Thirty-two per cent of the respondents living in the towns, 41 per cent in the villages and 76 per cent of the respondents living in the remote villages stated that they had secretly been counselled by their Muslim neighbours to shift to Jammu as con-

ditions for their stay in Kashmir involved risk to their lives. Eighty-two per cent of the respondents living in the towns and 57 per cent living in remote villages stated that the long discourses, broadcast on the public address systems of the Muslim mosques, on the sacred mission of the Muslim crusade in Kashmir, warned the infidels and traitors to leave Kashmir or face death. A political activist of Anantnag district in Kashmir stated in an interview:" "The warning was not veiled; it was blunt and outright. The amplifiers fit on the minarettes of the mosques, shrieked vengeance against the infidels and exhorted them to leave or face death. 'Ay Zalimo, Ay Kafiro, Kashmir Hamara Chor Do'; meaning: "O oppressors, O infidels: quit our Kashmir", was one slogan which was repeatedly broadcast from the mosques throughout the length and breadth of the Kashmir valley. The first attack of the Muslim militancy was focussed on us. The people in India must know the truth. The longer the truth is concealed, graver are the dangers to the nation". Sixty-two per cent of respondents living in the towns, 21 per cent respondents living in the villages and 8 per cent of respondents living in remote villages, stated that they read notices in Urdu newspapers, warning the Hindus to leave Kashmir within specified time limits. Sixty-seven per cent of the respondents living in the towns and 47 per cent of the people living in villages were forced out of their homes to join the rampaging mobs in the streets during the night of 19 January 1990. Eighty-one per cent of the respondents agreed, that they hid their women and children lest they were attacked. Twelve per cent of the respondents accepted that unruly bands of strangers entered their homes and their behaviour was menacingly dangerous. Eighty-one per cent of the respondents stated that during the night of 19th January 1990, and the nights which followed, they hid their women folk and their children from the unruly strangers who broke into their homes. Eighty-seven per cent of the respondents living in the towns, sixty-seven per cent of the respondents living in villages and sixty-eight per cent of the respondents living in the remote villages stated that they did not dare lodge any complaints with local police stations because (a) they feared retaliation by the militants (b) their identity would be revealed to the militants and (c) the militants kept a strict watch on the police posts. Seventy-nine per cent of the respondents living in towns and thirty-eight per cent living in villages stated that the police

posts in their local areas did not function.

Seventy-eight per cent of the respondents living in the towns and 83 per cent respondents living in the villages stated that they apprehended attack on their womenfolk. "There was a menacing fear among us", an octagenarian Kashmiri Pandit stated in his interview, "that our womenfolk would be subjected to assault. Various ominous rumours floated round, that young Hindu women would be rounded up for mass conversion to Islam. The rumours were not completely unfounded, several families in my locality secretely confided in me that they had seen suspicious characters prowling around their homes at the odd hours of the day. These families were among the first to quit our locality." Eighty-six per cent of the respondents living in towns accepted having decided to abandon their homes and leave Kashmir after the traumatic experience of the events on 19 January 1990, when they found themselves left to their fate, face to face with death and dishonour. The stunning surprise that we received the next day was that the entire valley had been abandoned to the wolves and the police, the magistracy and the law had withdrawn from all active function. Few Kashmiri Hindus were killed on 19 January, but several of the houses were ransacked and the inmates treated with little impunity." A local teacher living in Srinagar stated in his interview: "A Hindu neighbour, a man of some connections, told me the next day that he had made frantic telephone calls to the office of the Governor and to some of his friends in Jammu and Delhi, that the terror had broken out in the streets and they could be swallowed by it any movement." Ninety-three per cent of the respondents living in towns and 63 per cent respondents living in the villages stated that they did not want to join the night-long Muslim demonstration and violence, that commenced on 19 January, 1990. Forty-three per cent of the respondents living in the towns and 14 per cent respondents living in the villages accepted that they had evacuated under the protection provided by the Central Security Forces and that they would be trapped in case the security cover was not avilable to them.

Eighty-eight per cent of the respondents stated that if they had not evacuated they would have been assassinated in large numbers. Ninety-two per cent of the respondents stated that if they had not

evacuated, their women would have been subject to assault. Forty-six per cent of the respondents living in the towns, 61 per cent in the villages and 83 per cent living in remote villages stated that if they had not evacuated they would have run the risk of forcible conversion from their religion.

Fifty-two per cent of the women respondents living in towns and 86 per cent of the women respondents living in village stated that their men were marked for death and, therefore, they pressed them for evacuation. Sixty-eight per cent of the women respondents living in the towns and 74 per cent living in villages stated that they apprehended attacks on their homes. Sixty-three per cent of the women respondents stated that they had evacuated because of the widespread assassination of the Hindus. Eighty-eight per cent of the women respondents living in towns and 96 per cent living in the villages, accepted that they feared assault on their families. Seventy-six per cent of the women respondents living in towns and 72 per cent living in villages stated that they apprehended wholesale conversion of the Hindus. Eighty-eight per cent of the women respondents stated that there was no guarantee of the life in their localities and their evacuation was necessary. Ninety-seven per cent of the women respondents stated that if they had not evacuated, they would have been liquidated in large numbers.

None of the respondents stated having received any overt or covert instructions from the State Government or the Governor or his office. Six per cent of the respondents in the towns and 8 per cent of the respondents in the villages stated that they were advised by various formations of the Central Security Forces, to evacuate to safer places.

V
SEARCH FOR REFUGE

The State Government, awoke to the tragedy, the Hindus faced, after the exodus had reached its peak. The entire administration, staggering under the shock of militant assault from outside and subversion from inside, was unable to provide protection to the Hindus particularly in the areas where their population was denser and where the militant attack on them was severe. In the penny-pockets, where the Hindus

were spread in the remoter regions of the Valley, they were almost at the mercy of the militants and their Muslim neighbours. In fact, the abductions, kidnappings, torture killings and criminal assault on Hindu women, were more extensive in rural areas than in the townships, where the incidence of killing was higher. Most of the people killed were shot dead wherever they were found. In the townships, the attack was sudden and effective, because it was aimed at a quicker cleansing of the Hindus from the valley.

In a situation, where a large sections of the Muslims were armed with lethal weapons and had fallen upon their Hindu compatriots, the State Government was under an obligation, to help the minorities, spread over the Valley, evacuate them to safer places and provide adequate transport to facilitate their safe movement. The State Government, however, undertook none of these responsibilities and left the Hindus to make good their escape as best they could.

For quite some time, while the migration of the Hindus from Kashmir rapidly increased, the State Government watched with stoic indifference, the turbulations and the disaster the refugees faced. The upper echelons of the bureaucracy, dominated by the Muslims, were traditionally arrainged into two factions, the local Muslim officers and the officers of the Indian Civil Service, posted in Jammu and Kashmir. Incidently, most of the officers of the Indian Civil Service posted in Jammu and Kashmir were also Muslims. In the factional balances, the local Muslim bureaucrats, most of them having risen from very ordinary commissions to the high positions of responsibility due to the political patronage of the National Conference, as well as the Congress, enjoyed precedence over the rest. The Muslim bureaucrats of the Indian Civil Service, bereft of any roots in the State, survived by sheer craft and capacity to ingratiate themselves with the party bosses in power in the State or at Delhi. The Hindus, with their proverbial commitment to secularism, trudged in the fog.

Both the factions in the state administration supported the processes of the Muslimisation of the State and Muslim precedence. With the onset of the militant violence, both the factions assumed a demeanour of neutrality to the war of attrition that had been unleashed in the State, partly out of fear and partly out of preference.

In Jammu, where the refugees poured in thousands, the State Government failed to rise to the occasion and provide temporary shelter and relief to the hundreds of thousands of the Hindus sprawling on the streets in the temple city of Jammu. Where it not for the yeoman service of the voluntary Hindu organisations, which immediately swung into action to organise relief for the refugees, hunger and disease would have taken a heavy toll of the unfortune people, who had suddenly been thrown into the wilderness. No help came from any quarter. Silence of death fell on the liberals, the protagonists of secularism, the radicals and the rest. Gita-Bhawan, a temple complex situated in the heart of the Jammu city, adjacent to the Shiva Temple, was converted into a reception-cum-transit camp, where the Hindu refugees arriving from Kashmir and disembarked.[19]

VI
SCORCHED EARTH

The exodus of the Hindus from Kashmir was followed by widespread depredations of their places of worship. Almost everywhere in the valley the archaeological remains of the ancient Hindu temples, which stood an eloquent testimony to the Hindu heritage of Kashmir, were subjected to wanton attack.

The ancient ruins of the temples which were destroyed during the Muslim rule, were sacred to the Hindus, who visited the sites as a part of their religious tradition. At many places, the ruins were dug up, to wipe off their last traces.

Hindu religious, cultural and minority institutions were destroyed with greater zeal. The Hindu religious congregations were prohibited and the places where they were conducted, closed down. The famous shrine of Sharika, situated on the slopes of Hari Parbat hill and commanding a view of the old city, was covered by a pale-gray taurpaulin, for the satisfaction of the Muslims. The other religious places were either burnt down or closed. The buildings, in which the officers of the Hindu social organisations were located, were also burnt down or subjected to bomb attacks. The Hindu educational institutions were either burnt down or taken over by desparades supported by the militnats. Temples and shrines were destroyed by fire or subjected to bomb

blasts. The ancient shrine of Bhawani, at Tulamulla in Srinagar, was subjected to rocket attacks, which however, struck the surrounding structures, causing the shrine little damage. Almost the entire organisation of the Hindu schools and colleges run by the Hindu educational societies, including educational institutions run by the Hindu Educational Society, the Dayanand Anglo-Vedic Organisation and the Vishva Bharti Trust were either burnt down or seized by the militant sponsored Muslim organisations in a swift manoeuvre.

The Minister of State for Home in the Government of India, stated in the Indian Parliament on 12th March, 1993, that 38 temples and Hindu shrines were demolished, damaged and desecrated in Kashmir during the year 1989 to 1991.

Year	*Temples demolished and damaged*
1989	13
1990	9
1991	16
Total	38

The actual number of the temples demolished and damaged in Kashmir was much larger and vandalism to which the Hindu shrines were exposed was widespread. Sixty-eight temples and shrines located in the remote villages, far more ancient and sacred were burnt and demolished or damaged, about which reports were never collected by the State Government. In most of these remote places, there were no Hindus left behind to have lodged complaints with the administration.[20] The State Government, least interested in the safety and protection of these religious shrines, made no efforts to collect any information about the desecration and damage to which these temples were subjected. The data and facts about these temples were collected from the Hindu refugees in Jammu and the other places in India.

In the aftermath of the demolition of the Babri Masjid, 1992, traditional Muslim intolerance towards the Hindus, erupted into widespread attack on the Hindu temples and places of worship. Thirty-nine temples were demolished burnt, damaged and desecrated by frenzied mobs, who cried death to India and the Hindus.[21] The Congress

leaders were hurt by the demolition of the Babri Masjid and gave ample expression to their anger and distress. None of them, however, voiced any protest against the widespread demolition and desecration of the Hindu temples in Kashmir. After the demolition of the Babri Masjid, the wanton destruction of the temples in Kashmir was reported by the press, though reservedly. Angry demonstrations and protests against the desecration of the Hindu temples and their systematic demolition, were held by the Hindu refugees in Jammu and other parts of the country. Neither the lurid tales of how the temples were desecrated nor the protest made by the Hindu refugees, evoked any response from the Government of India.

The Hindu refugees protested against the demolition and desecration of the temples and the shrines left behind by them in Kashmir. In order to provide fresh cover to Muslim communalism in Kashmir, a fresh disinformation campaign was launched to malign the Hindu refugees for their reaction against the destruction and damage to their places of worship. Several people, published their own account of the demolition and desecration of the Hindu temples in Kashmir. They published stories of the temples which had been damaged and promptly repaired by the State Government and temples which had not been demolished. Most of them sought to link up the demonstration of protest against the temples in Kashmir with the controversy which followed the demolition of the Babri Masjid. The stories fled by them were false and concocted. They never carried out any investigations into the damage done to the temples in Kashmir. Evidently it was clear that their version of what had been happening in Kashmir was based upon monitored information aimed to dilute the impact of the widespread damage done to Hindu places of worship in Kashmir. The controversy did not last long as the Hindu religious organisations; the Sahayta Samiti, the All State Kashmiri Pandit Conference and the local units of the Bhartiya Janata Party made public, unassailable evidence of the destruction and damage done to the Hindu temples in Kashmir.

The destruction of the temples and religious institutions was evidently aimed to destroy the Hindu religious tradition and culture and to pave the way for the total Islamisation of Kashmir. The militant organisations followed a systematic policy to uproot the Hindus from Kashmir, economically and socially, and break their resolve to return

home. Right from 1989, when the militant violence commenced, the militants followed scorched earth policy of demolishing Hindu localities, dispossessing the Hindus of their land, orchards, business establishments, trades, shops and other properties to deprive them of the means of their livelihood[22].

During the months after the exodus of the Hindus, their houses were ransacked and the belongings and household goods and property, left behind by the fleeing families, looted.

Many of the houses were torched and during the four years from 1990 to 1994, 18,000 houses were either burnt down or destroyed. Many of the houses, which were not burnt, were occupied by mercenaries serving the militant organisation. The premises of the business establishments, shops and commercial establishments were also taken over by the Muslim activists who supported the militancy. In the rural areas, agricultural land, orchards and the lands attached with the burnt Hindu houses, were nibbled away by Muslim activists supporting various terrorist organisations. The cattle and the livestock, left behind by the Hindus, were sold for slaughter.[23]

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Chapter IV

HUMAN RIGHTS

The Second World War led to the emergence of a new world, which accepted the necessity of a new security structure to save itself from the scourge of another war and recognised the responsibility of restructuring the instruments of national power as well as international organisation on the principle of the individual accountability of man to ensure all people, irrespective of nationality, racial and ethnic origin, sex and religion, rights considered basic to all human life.[1] The War Crimes Tribunals insisted upon the recreation of a jurisdiction, which underlined the responsibility of the individual as a basis for the enforcement of rights which were inherent in man and which were violated by the fascist regimes.

Human rights transcend the boundaries of civil jurisprudence. They have a sanction which goes beyond the law of notice and reflects the fundamental moral commitments of the human civilisation to equality of man, inviolability of life, protection against fear, and arbitrary exercise of authority, exploitation, discrimination on grounds of nationality, religion, ethnicity, sex and colour.[2] Human rights have the quality of imperatives which are recognised by mankind as the guarantees for its survival. In a world dominated by balances of power, based upon absolute strike capabilities, ideological regimentation for national, religious and ethnic precedence, will inevitably lead to crusades for more disastrous than the Second World War.

The new spirit, a quest for a world order, in which the genocide of man and the violation of his basic rights would not be perpeterated behind the boundaries of the nation states, is reflected in the Universal Declaration of Human Rights, adopted by the General Assembly of the

United Nations on 10 December 1948[3], and the United Nations Covenants of Human Rights adopted by the General Assembly on 16 December 1966.

The Universal Declaration of Human Rights, which forms the groundwork of the international jurisdiction of the rights of man, underlines two fundamental principles.

(i) The Declaration enjoins upon the States to uphold human rights and protect them, but it imposes a direct obligation on the individual and all the organs of the society to honour the rights envisaged by the Declaration and to desist from acts which violate them. The obligation to honour human rights is not limited to the authority of the State; it extends to all people and all organs of the society, as well as all inter-state regimes, and international organisations. The obligation on the individual is patent and supersedes the immunities arising out of the authority of the State.

The Declaration does not underline guarantees against civil jurisdiction alone. The human rights are fundamental rights; they are also civil rights. The protection envisaged by the Declaration imposes a limitation on the exercise of authority by all regimes, including instruments of social control, private citizens, foreign states and international organisations.[4]

(ii) The universal Declaration of Human Rights signifies the recognition of a juridical organisation of the world community, in which the equality and dignity of man are acknowledged and as a consequence, it is accepted that man has a fundamental right to free movement in search of truth and the attainment of moral good and justice besides the right to a dignified life. The Declaration is not a partial guarantee and it does not envisage, protection for any specific sections of the people of the world. The safeguards envisaged by the human rights are universal and are available to all people of the world irrespective of their nationality, the regime by which they are governed and religion, race and sex to which they belong.

(iii) The Universal Declaration of Human Rights is a guarantee against all ideological aggrandisement, regimentation and communal majoritarianism. The rights envisaged by the Declaration are irreconcilable to all political, social and economic regimes which are based

upon discrimination on the basis of ideological precedence. Fundamental rights, including human rights, conflict with restricted citizenship and all forms of religious protectorates.

The Universal Declaration of Human Rights spells out in thirty sections, the rights of man, which the declaration proclaims are inalienable. The rights envisaged by the Declaration are not subject to any limitation of authority, whatever its source. "The Universal Declaration describes itself as "a common standard of achievement for all people and all nations." The Declaration describes for the first time in the history of international organisation, a juridical sanction, which is not derived from the authority of the nation state.

The basic human rights, ensured by the Universal Declaration, include the right to equality of man; due process of law; freedom of thought, expression, assembly and association; freedom of faith, right to equal participation in government and right to equal share in social progress. The United Nations Covenants on Human Rights describe the process, to ensure people the right to equal share in social progress.

(i) *Equality of man :* The equality of man is the fundamental principle of the Universal Declaration and forms the basis of the Covenants of Human Rights. The right to equality is not subject to any descrimination, and enunciates the obligation of respect for human dignity which flows from it. Human beings, the Declaration proclaims, are born free and equal in dignity and rights. They possess reason and conscience and wisdom to act towards one another in a spirit of brotherhood. All people, the Declaration underlines, are entitled to all rights and freedoms embodied by it, without distinction of any kind, such as race, colour, sex, language, religion, political opinion, nationality, property or birth. All people, men and women, without any exception have the right in equal measure, to life, liberty and security of person. No one is liable to slavery or servitude or precedence of religion or opinion. All people are equal before law and are entitled to protection of law without any discrimination.

(ii) *Due process of law:* Due process of law is the cornerstone of the Human Rights Declaration. The due process of law is laid down by the Declaration in the following principles:

(a) All people have the right to remedies against violation of fundamental rights granted to them by the constitution or law;

(b) no one is subjected to arbitrary arrest, detention or exile.

(c) All people are entitled to impartial public hearing by independent tribunals in the determination of their rights and obligations and criminal charges against them.

(d) No one is punished for an act or omission which did not constitute a penal offence by law at the time it was committed.

(e) No one is liable to a penalty imposed for a penal offence, which is heavier than the penalty liable to be imposed at the time the offence was committed.

(f) No one is subject to arbitrary interference with his privacy, family home and correspondence.

(g) Any one accused of a penal offence is presumed to be innocent until proved guilty according to law in a public trial at which he has had all guarantees necessary for his defence.

(h) All people are entitled to freedom of movement, including the right to go abroad, return home and seek assylum elsewhere.

(iv) *Freedom of thought and expression:* The Universal Declaration proclaims that all people have the right to freedom of thought of conscience and religion, including the right to change religion, and in such a case, immunity from inquisition for blasphemy. All people have the right to freedom of opinion without interference and the right to seek, receive and impart information and ideas without any restrictions arising out of the national frontiers. The Declaration denies any obligation to unquestioned obedience to any instrument of State, society or religion and vests the ultimate responsibility for human action upon the reason, conscience and wisdom of free men.

The Declaration affirms that everyone has the right to join trade union and associations for the protection of his interests. The acknowledgement of the freedom of association in the religious, educational and cultural fields is unequivocal. The rights include freedom of assembly for worship and religious observance and the right to choose the kind of education for children by any community or individual.

(v) *Popular government*: The Declaration affirms the basic principles of equality in respect of the governance of a people, and acknowledges the right of all people; irrespective of nationality, ethnicity, opinion and religion, to take part in the governance of their states, directly or through their representatives. The Declaration proclaims that the people are the source of authority of the government and they have the right to express their will through periodic and genuine elections based upon universal adult sufferage and free voting procedures.

(vi) *Economic and social progress*: The Human Rights Declaration embraces freedom from want and exploitation no less than freedom from fear and affirms the right of all people irrespective of their nationality, race, religion and opinion to social security, right to work, right to free choice of employment, right to just and favourable conditions of work, right to rest and leisure, right to an adequate standard of living and the right to education.

The universality of human rights depends upon the acceptance of rule of law as the basis of all social organisation. Due process of law emnates from the rule of law. Rule of law alone protects the weak. "Without the rule of law arbitrary action will engender further arbitrary action and injustice breed injustice. Without the rule of law there can be no international society at all."

The protection that the rule of law affords to human freedom and equality of man, is the moral sanction of the human rights. Rule of law alone, is the guarantee against arbitrary exercise of authority and precedence of religious racial and ethnic origin.

I
TERRORISM AND HUMAN RIGHTS

Ideological character of international terrorism is of crucial significance to the whole juridical structure of human rights. Belief-systems, legitimised by community concerns or even national consensus, do not validate international terrorism. Terror is not accepted as a valid and legitimate instrument for the enforcement of change and wherever belief-systems are sought to be invoked to rationalise terror, human rights are directly invaded.

International terrorism involves, military operations against non-combatant civil population of a state besides its combatant forces. These military operations tantamount to the violations of the laws of war which prohibit military reprisals against civil populations. The terrorist violence also amounts to a crime against peace as all wars of subversion in pursuance of political objective, violate the charter of the United Nations. Lastly, all terrorist violence is a crime against humanity. Mass assassination of civil population, sectarian violence, ethnic cleansing of groups, communities and minorities, forced migration, torture hostage-taking and abduction, molestation of women, communal violence etc. are crimes against humanity.[5]

There is a growing corpus of municipal as well as international law and precedent to deal with political terrorism.[6] Civil jurisprudence and international law generally identify political terrorism as a crime, more henious than traditional civil and international crime. Many countries have extended their penal codes to most terrorist offences.[7] Legislation has been undertaken in a number of countries to provide for special police powers and special judicial procedures to deal with terrorist crime. New antiterrorist organisations, military as well as para-military, have been created within police departments and other national security organisations to deal with terrorist regimes.[8]

All these measures have been found necessary to combat international terrorism and safeguard the lives of law-abiding citizens and innocent people as well as save the Nation States from being broken up by sponsored terrorism. Nations with long democratic traditions, including the United States of America, one of the foremost super-states, supporting human rights, have always demanded the adoption of severely stringent measures against international terrorism.[9]

The United States proposed a set of highly stringent rules to deal with international terrorism in the draft of an international convention, which the American Government submitted to the *ad hoc* Committee of the United Nations on International Terrorism in 1973. Most of the West Asian States disapproved of the draft convention, partly out of cold-war interests and partly out of the preference the West Asian States had shown for subversive warfare against Israel.[10]

The United Nations has laid down elaborately, the principles, imposing obligations on the member states to desist from any action, which contributes to the subversion and terrorist violence. The United Nations Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States, in accordance with the Charter of the United Nations reads:

(i) Every states has the duty to refrain from organising or encouraging the organisation of irregular forces, or armed bands, including mercenaries, for incursion into the territory of another state;

(ii) Every state has the duty to refrain from organising instigating, assisting or participating in acts of civil strife or terrorist acts in another state or acquiescing in organised activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

The United Nations lists killings, kidnapping, torture and abduction as a crime. According to the resolution of the General Assembly adopted in 1985, the General Assembly:[11]

(a) unequivocally condemns as criminal all acts, methods and practices of terrorism, wherever and by whoever committed including those who jeopardise the friendly relations between States;

(b) deeply deplores the loss of innocent human lives which result from such acts of terrorism;

(c) further deplores the pernecious impact of acts of international terrorism on relations and cooperation among states including cooperation for development;

(d) appeals to all states, they have not yet done so, to consider becoming party to the existing international conventions relating to various aspects of international terrorism;

(e) invites all states to take all appropriate measures at the national level with a view to the speedy and final elimination of the problem of international terrorism, such as the harmonisation of domestic legislation with existing international conventions,

the fulfilment of assumed international obligations, and the prevention of the preparation and organisation in their respective territories of acts directed against other states;

(f) calls upon all states to fulfil their obligations under international law to refrain from organising, instigating, assisting or participating in terrorist acts in other states, or acquiescing in activities within their territory directed towards the commission of such acts.

The Security Council adopted another resolution on 18 December 1985, urging upon all the States to undertake appropriate measures to bring to end hostage-taking, abduction and other forms of terrorism. In the operative part of the resolution, the Security Council condemned, unequivocally, all acts of hostage-taking and abduction called for the release of all hostages and abducted persons wherever, and by whoever they are being held, and affirmed the obligation of all states in whose territory hostages or abducted persons are held, urgently to take all appropriate measures to secure their safe release and to prevent the commission of acts of hostage-taking and abduction in future.[12]

A number of conventions of the United Nations Commission of Human Rights, the *ad hoc* Committee on International Terrorism, reposts of the Secretary General and the instruments of various inter-state organisations on political and international terrorism, have urged the members of the international community to undertake stringent and effective legal and administrative measures to combat terrorism. The recommendations envisage the institution of fresh political instruments and modified penal procedures to check terrorism. The Council of Europe produced a convention on terrorism in 1977, which stipulated that amnesty available to political offences should not apply to terrorist violence associated with all forms of terrorism, assassinations, bomb outrages, rocket attacks and killings by other explosive devices, kidnappings, hostage taking, hijacking and such other offences.[13]

The claim to any immunity available under the human rights jurisdiction, for acts of terrorism, whatever their ideological motivation or objective, is untenable, because terrorism involves a military campaign against a civil society, which has no means to retaliate in combat except through the instrumentalities of the State. Terrorism cannot be

justified on the grounds of its political and ideological motivations. International conventions and treaties, including the Human Rights Covenants and other agreements do not recognise terrorism as legitimate political action on any ideological or value basis.

Terrorism is a negation of life. All value-based violence, which contravenes generally accepted norms of social order, human behaviour and right to life, and equality of all men, violates the rights of man. Judgments based upon preferences which violate, life, equality and freedom of the mankind, do not have any revolutionary content. Terrorist regime have no claim to any immunity available under civil law or the Universal Declaration of Human Rights. All political terrorism is organised crime. There is no freedom which transcends freedom; there is no liberty which infringes liberty; there are no rights which violate rights.

II
HUMAN RIGHTS IN KASHMIR

Terrorism in Kashmir, motivated by ideological commitment to a Muslim crusade, is a graver violation of human rights. All crusades are a negation of human rights as all crusades underline ideological absolutism. The Universal Declaration of Human Rights was adopted by the world community to save mankind from the scourge of the crusades. The Second World War was also a war of the crusades. The Muslim crusade, which seeks extermination of the religious and ethnic minorities in Jammu and Kashmir and establishment of the primacy of Islam in the government and the Society of the State, contravenes the principle of equality and due process of law, which is the basis of the Universal Declaration of Human Rights.[14] Terrorism, whatever its ideology and objective, is a crime against international law, a crime against humanity, a crime against the laws of war and a crime against the Declaration of Human Rights.

The terrorist violence in Jammu and Kashmir, raging for the last, five years, has led to severe consequences which are inextricably interlinked with the violation of human rights. The patterns of warfare in which terrorism has manifested itself in the State has several dimensions, some of which are characteristically original to the violence un-

leashed by the terrorist organisations and their mentors.

The first phase of the Muslim crusade in Kashmir, began with the genocide of Hindus. The Hindus were opposed to the secessionist movements, Muslimisation as well as Pakistan. The ethnic extermination of the Hindus was, therefore, the first strategic objective of the militant flanks inducted in Kashmir.

Genocide is presumed to involve a hundred or more killings of an ethnic group. It is generally accepted by the civilised nations of the world and recognised by the canons of the law of the nations, that genocide is the destruction in whole or in part, of a national, ethnic, religious or racial group. The United Nations General Assembly adopted a resolution on 11 December 1946, declaring genocide a crime under international law.[15] A Convention on the Prevention and Punishment of Genocide adopted by the General Assembly, came into effect on 12th January 1951. The Convention proclaimed genocide as a crime against International Law. The Convention listed destruction of an ethnic, racial or religious groups as genocide. Specifically, genocide includes:[16]

1. killing of the members of a community or a group because of their affilliations;
2. causing bodily or mental harm to the members of a community or a group;
3. deliberately inflicting conditions on the community or the group to bring about its physical destruction;
4. imposing measures to prevent births in the community or the groups.
5. forcibly transferring children from one group to another.

In Kashmir, terrorist violence involved the liquidation of thousands of the Hindus. A computation of the data of the massacre of the Hindus on the basis of the reports in the local press, newspapers published in Srinagar and other townships in Kashmir reveals that the number of the Hindus killed by the terrorists run into several thousands. The Hindus among them, mainly the Kashmiri Pandits were killed in large numbers irrespective of their age profession and political commitments. The press reports are supported by several surveys and inquiries undertaken to assess the loss of the Hindus lives in Kashmir.

Among the dead were several hundred Hindus who were reported missing. Among the missing were many Hindus whose bodies were never identified and who were disposed off by the State Government agencies at their will. Many of the people killed and still unidentified were Hindus. The terrorist assault on the Hindus in Kashmir commenced in the fall of 1989, and by the onset of Summer 1990, more than seven hundred of them had been assassinated in cold blood. Most of the victims were innocent people who lived in poverty and persecution in the Muslim dominated constitutional organisation of the State.

The terrorist killings were accompanied by torture and atrocities, unheard of in the annals of human history, which tantamount to grave crime against all ethics and against humanity. In sheer disregard of the norms of political behaviour, recognised by all nations and now embodied in several international covenants, including the Universal Declaration of Human Rights and the United Nations Covenants on Human Rights, adopted by the United Nations General Assembly in 1966, the terrorists inflicted grievous hurt, injury and torture on hundreds of Hindus. Torture deaths were brought about by inhuman practices which included strangulation by using steel wires, hanging, impaling, branding with hot irons, burning alive, lynching, guaging of eyes before assassination, slicing, dismemberment of limbs, drowning, dragging to death, draining of blood and slaughter.

M.L. Bhan of Doompora, Srinagar, was travelling in a bus with his 12 year old son on 15th January 1990. He was shot dead in the bus itself and thrown out on the road. T.K. Razdan was shot dead on 12th February 1990, near Gawkadal, Srinagar. His dead body was dragged through the street upto a nearly mosque and left for display there. Mrs. Sarla Bhat, a staff nurse at the Medical Institute, Soura, Srinagar, was gang-raped on 14th April, 1990. Her dead body was found on the road at Lal Bazar, Srinagar. Dr. Shiban Krishen of Alikadal, Srinagar, and his wife were killed in presence of their two children, aged 10 and 8 years.

Brij Nath Shah was kidnapped on 27th April, 1990 from his home at Sadhu Ganga, Kupwara in Kashmir. Two days later his body was found hanging by a tree. His lips had been stitched. Sham Lal of Chiragam in Anantnag, Kashmir was kidnapped in May 1990. The

hands and feet of the unfortunate man were chopped off and his skull battered. Sham Lal's dead body was stuffed in a sack and left on the threshold of his house. Prem Nath of Uttarsu in Anantnag District was kidnapped on 27th May, 1990. His body was found impaled, his chest and feet nailed. Three officials of the Life Insurance Corporation of India were kidnapped in Srinagar. They were subjected to torture and then confined in an abandoned Kashmiri Hindu house. The house was set ablaze. Two of the officials were burnt alive while the third official escaped with more than 50 per cent burns.

Bhushan Lal of Ompura in Badgam, Kashmir, was kidnapped on 27 April 1990. He was tortured and then stangulated to death. His body was found the next day. Girja, a school teacher at Bandipora, was kidnapped from the house of a Muslim colleague. The unfortunate woman after being gangraped, was sliced on a mechanical saw. Sarwanand Kaul Premi, 64 year old teacher, well-known scholar and Kashmiri poet of great eminence, and his son, Virendra Kaul, a Post and Telegraph employee, were dragged out of their home in Hom Shali Bug in Anantnag district of the Kashmir Province late in the night on 29th April, 1990. Their dead bodies were found after two days, with their eyes gouged out. Lassa Koul, Director, Doordarshan Kendra, Srinagar, was shot dead outside his house in Bemina, Srinagar, late in the evening on 13th February, 1990. Brij Nath Koul of Herman, Shopian, an employee of the agricultural Department and his wife were tied to a speeding vehicle. Their mangled bodies were recovered ten kilometers away from their home.

The dead bodies of several Kashmiri Hindus were salvaged from various places in Kashmir. Their heads were severed off. Several dead bodies of Kashmiri Hindus were recovered, which had been branded by hot irons before death. Several bodies were found with eyes gouged out. The most dastardly and inhuman acts of terrorism were those committed in the hospitals where the Hindus brought in for treatment, were either allowed to die for want to treatment or brutally murdered. A number of cases were reported, where injured Hindus were allowed to bleed to death. Many cases were reported where kidnapped Hindus were allowed to bleed to death. Cases were also reported where kidnapped Hindus were drained of their blood and their lives were ter-

minated. Among the dead in Kashmir, the State Government is yet to disclose the identity of about four hundred bodies, recovered by the police and disposed off at its will. A survey of the migrant population reveals that several hundred Kashmiri Pandits, were missing and presumed to be dead.

The worst sacrilege to which the Hindus were subjected, was that the kith and kin of Hindus killed in Kashmir, were not allowed to carry the dead bodies to Jammu for cremation according to the Hindus rites. Evidently, the cremation of Hindus in Kashmir could not be carried out according to the Hindu rites. The Hindu dead bodies were actually disposed of by the State Police on their own and in total disregard of the injury and hurt the cremation of the dead bodies by the State police caused to the religious feelings of the bereaved Hindu families.[17]

While the genocide of Hindus in Kashmir was in progress, the militants extended their operations to the Muslim majority districts of the Jammu province, contiguous to the Kashmir Valley. The militant forces aimed to establish a terrorist regime in these districts, in order to cleanse the part of the Jammu province lying west of the Chenab of the Hindus. A campaign of subversion was launched in Doda and the adjoining districts to consolidate the secessionist forces and organise the despatch of Muslim volunteers for arms training across the Line of Control.

The militant operations in the Doda district, wherefrom the militant operations in the Jammu province began, followed the same tactical pattern, the militant forces had followed in Kashmir:

(i) the terrorist launched a widespread manhunt of the Hindus, killing than wantonly in large numbers;

(ii) they warned the Hindus to evacuate from the district to complete their ethnic extermination;

(iii) they smothered the last resistance against secessionism, among the Muslims who were opposed to Pakistan, by force and intimidation;

(iv) after the Hindus were eliminated and the society fundamentalised they launched a major military offensive against the In-

dian security forces;

(v) having established a terrorist regime in the district, they extend their operations to the entire Jammu province.

The Hindus were subject to torture and barbarity, which do not have a parallel in the annals of history. The following local account gives a description of the inhuman practices, brutal torture and physical assault to which the Hindus in the district were subjected.

"Two youths named Shri Rakesh Kumar (24) and his brother Rattan Lal (22) were taken as hostages. After four days, their dead bodies were found near a nallah. They were brutally killed—the breast of Shri Rakesh was opened to take out his heart. After slaughtering Shri Rattan Lal, his skin was removed from the face; private parts of both the brothers were cut off."

After a week of this horrible incident of gruesome killings, the "Mujahids" killed another youth of Kishtwar town. His name was also Rakesh Kumar. He was also kidnapped along with another youth Gambhir Chand, who managed his escape despite being hit by a bullet. The dead body of Shri Rakesh was found near Bhagana village 40 kms. from Kishtwar town. His eyes were removed and different parts cut before killing.

On 26 March 1994, two Hindu youths from village Puneja (Bhaderwah) were kidnapped and tortured to death. On 30.4.1994 an Ex- Serviceman, Shri Om Raj R/o Sinerra (Bhaderwah) was gunned down in his house and his property looted. On 2.5.1994 Ranjit Singh, Gulab Singh and a Gujjar boy, Abdul Gani, were kidnapped and mercilessly tortured by Afghans at village Sumbar. Their parents were forced to take beaf. On 27.5.1994 three Harijan boys were killed mercilessly in Adall village of Kishtwar. Their names were: Shri Kishore Lal, Jeevan Lal, and Ravinder.

Two militants were killed by villagers at Kote village. Later the whole village was burnt and the inhabitants forced for migration to Himachal Pradesh."

III
ETHNIC CLEANSING

With the mass extermination of the Hindus, the terrorist regimes launched a virulent campaign of pressure and intimidation to drive out the Hindus from Kashmir. The large-scale and indiscriminate killing of Hindus, which increased every day and the complete breakdown of the law and order, confronted the Hindus with death or conversion to Islam. The killing of Hindus was accompanied by threats and a propaganda campaign to exhort them to evacuate from Kashmir. Threats and warnings were administered to the Hindus to desist from resisting the Muslim struggle and urged upon them to join the Muslim crusade against India or quit to save their lives. A report on the human rights violations in Kashmir, noted: "While the mass extermination of Hindus was in progress, the militant organisations began to mount pressure on the Hindus to drive them out of Kashmir. A vicious propaganda campaign was unleashed against the Hindus in the press and public, exhorting them to leave Kashmir. The Hindus were charged of treason with the cause of the freedom of Kashmir, and warned to clear out or face the fate of heretics and traitors to the cause of Islam. Evidently, there were several surreptitious moves afoot to prepare ground for the conversion of the Hindus and as a first step in that direction, the Hindus were forced out of their homes to come out in open and join the militant demonstrators in the streets. The campaign started on 19th January, 1990, the day, the terrorists made a concerted bid to overthrow the government of the State and assume control over the Secretariat, the Radio and the Television Station."

The widespread killings, assault on women, the fear of conversions, which increased every day, shocking experience of being forced to join the militant campaign against India, were the main reason which drove out the Hindus from Kashmir. The whole police organisation was dominantly Muslim, and its rank and file acted in collaboration with the militants.

The forms of threat and intimidation used to force the Hindus to evacuate from Kashmir, were also used to dislodge the Hindus from Doda. The Hindus constituted 45 per cent of the population of the

Doda district.[18] In order to achieve its Muslimisation, the reduction of the Hindus was necessary.

IV
UNIVERSAL GUARANTEES

The human rights movements suffered distortions under the impact of the Cold War. The Cold War restricted the scope of the Universal Declaration of Human Rights and the United Nations Covenants on Human Rights to obligations of the State. The human rights organisations like the Amnesty International and the Asia Watch, restricted the scope of the human rights to the responsibility of the State. Within the context of the Cold War, the human rights movements was reduced to claims against the Soviet State, the Communist States of Eastern Europe and the States which did not join the western alliance structures for the containment of communism.

The "Prisoners of Conscience" were found only in the countries governed by the communists and the nations arraigned against colonialism. Prisoners of conscience were not found in theocratic states aligned to the western powers, where religious minorities and sub-cultural nationalities were seggregated for doom. Nor were the prisoners of conscience found in the States ruled by military regimes sponsored or supported by the western powers.

The western nations treated terrorism as an international crime, which was aimed to destablise the legitimate authority of the States. However, they viewed terrorist activity against the communist regimes and in the States, which did not participate in the containment of communism, as political strife, claiming immunities of civil jurisdiction for the insurgent factions. The Amnesty International and the Asia Watch refused to register the genocide of Hindus in Kashmir, torture and abduction of innocent people, assault on women, and exodus of thousands of people from their original habitat and the destruction of their places of worship, as terrorist crimes. Instead, the international human rights organisations, called for protection of the human rights of the terrorist flanks, which they alleged, were infringed by the police action undertaken by the Indian security forces.

The terrorist violence in Jammu and Kashmir, mixed up with a whole history of conflict between India and Pakistan and the Muslim secessionist movement for the disengagement of the State from India, provided a major ground for Pakistan and other western powers, to turn the human rights issues in Jammu and Kashmir upside down. Pakistan accused the Indian Government of human rights violation in Jammu and Kashmir and the accusations levelled by the Government of Pakistan received tacit support from several of the western powers. The whole affair was motivated by power interests of the cold-war, which entered its last phase, with the developing crisis in the Soviet State. As the cold-war balances began to crumble, the western powers assumed greater initiative to insist upon the accountability of the third world states in dealing with terrorism. India was put on the defensive.

The Human Rights organisations in India also maintained complete silence over the mass extermination of Hindus in Kashmir.[19] Instead, most of these organisations joined the disinformation campaign launched by terrorist organisations, Pakistan and the abettors of terrorism in Kashmir. In the midst of the holocaust, which had engulfed the whole Hindu population in Kashmir, the human rights organisations in India, the People's Union for Civil Liberties, Initiative for Kashmir, traded charges with the State Government, accusing the Indian security forces, the Indian State and the Hindus in and outside Kashmir, of having subjected the community of the Muslims, other wise peaceful and patriotic, to oppression and exploitation. While the militant organisations, shrieked Jehad in Kashmir, the Human Rights organisations, published reports of how the Muslims in Kashmir had been thwarted by their Indian rulers, in their quest for freedom. A number of human rights activists visited Kashmir in the summer of 1990, when the Muslim crusade in Kashmir was at its peak, and conducted inquiries from the Hindus, who were awaiting evacuation. The inquiries were conducted in open and in the presence of armed desperadoes, who often escorted the human rights activists from one deserted Hindu locality to another. Evidently, the trap was well laid and the helpless men and women, with death hovering over their heads, could hardly spell out the truth of what had befallen them.[20]

The Universal Declaration of Human Rights does not envisage a partial guarantee against civil jurisdiction alone. Human rights are recognized as the basic and fundamental rights. They are also civil rights. The protection envisaged by human rights imposes a limitation on the exercise of authority by all regimes, including instruments of social control, private citizens, foreign states, and international organizations. The terrorist organisations in the State, the Muslim crusade against India, abettors of terrorism, and Pakistan cannot be absolved of the liability of violation of human rights in Jammu and Kashmir.

The responsibility of the violation of human rights in Jammu and Kashmir rests upon:

(i) the terrorist regimes in the state;

(ii) the Muslim organisations and paramilitary outfits which have aided and supported terrorism;

(iii) Pakistan and other foreign states, for having, sponsored and supported terrorist organisations and operations in Kashmir, and provided them arms, ammunition, training and funds.

The Universal Declaration of Human Rights does not envisage protection for a specific community or a section of the people of the world. The safeguards for human rights are universal and are available to all people of the world, irrespective of their nationality, regime by which they are governed and the religion and the race to which they belong. The Universal Declaration of Human Rights does not envisage protection of the rights of any single community in the world and its insulation against infringement of these rights. It does not provide protection only to the Muslims in Jammu and Kashmir against violation of their rights; it extends protection to all the communities in the State, more so, the Hindus and other minorities, which are more exposed to religious, political and economic dominance of the Muslim majority of the State. Genocide, forced mass exodus of minorities from their homes, and torture are grave violations of human rights. The Universal Declaration of human rights protects the Muslims in Jammu and Kashmir against the infringement of their rights, but it also envisages protection for Hindus and other ethnic and religious minorities in the State against extermination, religious persecution and slavery to a Muslim State. The

Declaration is a guarantee against all ideological aggrandisement, including precedence claimed by the Muslims in the Muslim States.

All crusades are a negation of human rights. The religious crusades which seek to establish religious precedence, including the crusade in Jammu and Kashmir, are violations of human rights. The rights envisaged by the Universal Declaration are irreconcilable to all political regimes which are based upon religious precedent. Fundamental rights, including human rights, conflict with all forms of religious protectorates and restricted citizenship.

The Indian State has an obligation under the Universal Declaration of Human Rights, the United Nations Covenants on Human Rights and the resolutions of the United Nations General Assembly and the Security Council, to undertake effective measures against international terrorism. The measures, specifically listed in the resolutions adopted by the General Assembly and the Security Council, include drastic amendments in municipal law and constitution of civil defence organisations to meet international terrorism. These measures include:

(i) harmonisation of domestic legislation, with existing international conventions on terrorism;

(ii) prevention of the preparation and organisation in their terrories of acts directed against other states;

(iii) prevention of acts aimed to obstruct the application of appropriate law enforcement measures to persons who commit acts of international terrorism;

(iv) modification of penal procedures and institution of fresh political instruments to combat terrorism;

(v) withdrawal of amnesty in respect of terrorism, including assassinations, bomb blasts, rocket attacks and kidnapping.[21]

The Indian state has not so far, undertaken any legislation, except temporary and transitional measures, to bring about a purposeful harmonisation of domestic legislation with existing international conventions on terrorism. The Indian Government has brought about some form of modifications in the existing criminal procedures to deal with terrorism, but no new political instruments have been devised to render

police action against terrorism effective and immediate. The State Government, which is vested with the powers to maintain law and order, in accordance with the federal division of powers under the Constitution of India, has not taken any measures to prevent acts aimed to obstruct the application of appropriate law enforcement measures to deal with persons who commit acts of international terrorism. The Indian Government also has not adopted any measures to prevent obstruction of action against terrorism. The terrorist regimes have established several strategies, which involve the use of religious institution, limitations of federal jurisdiction, specially accepted in favour of Jammu and Kashmir by virtue of Article 370, and public demonstration by fundamentalist pro-Pakistan and secessionist forces in support of terrorist organisations.[22]

Two measures were taken by Jagmohan to streamline action against the terrorist elements. First, he ordered demarcation of 5 kilometer border belt along the Line of Control and its fortifications by the Indian security organisation to check infiltration of armed militants from Pakistan. "Despite repeated requests by the Home Ministry and also by the Border Security Force at the local level, no powers to search and arrest were conferred on the B.S.F. Consequently the B.S.F. officials were powerless and they could do nothing even if they suspected that an infiltrator was hiding in a village. By the time they approached the local police, the suspect would disappear. In some cases, even connivance was apparent.[23]" The State administration, a large part of which was infested by pro-Pakistan elements, opposed any effective action to check the infiltration of enemy agents along the Line of Control. Jagmohan wrote: "In the absence of any effective measures, border crossing took place with impunity. Person in political authority opposed the idea of imposing night curfew along one or two-kilometre belt. Whenever any proposal in this regard was mooted, theoretical issues relating to Article 249 and Article 370 of the Constitution of India were raised.[24]" These handicaps were removed and powers of search and arrest were vested with Border Security Force. The second measure adopted by Jagmohan was the amendment of the Public Security Act which provided for the detention of the subversives outside the State.[25]

The Government of India has not so far, taken any measures to harmonise domestic legislation with existing international conventions on terrorism, to combat terrorist activities in the State. Nor has the Indian Government enforced the withdrawal of immunity available under civil law, in respect of terrorist acts, including assassinations, bomb-blasts, rocket attacks and kidnapping. A Special Court was appointed under the Terrorist and Disruptive Activities Act in Jammu in 1990. The Terrorists and Disruptive Activities Act provides for action, including arrest and detention and power to search, which in no manner affects the legal protection envisaged by civil jurisdiction.[26]

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APPENDIX

Appendix I

2. Universal Declaration of Human Rights

Adopted and Proclaimed by General Assembly Resolution 217 A(III) of 10 December 1948

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realisation of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy family, home or correspondence, nor to attacks upon his honour

and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief,

and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination has the right to equal pay for equal work.

3. Everyone, who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by order means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Appendix II

4. (a) International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966

ENTRY INTO FORCE: 23 March 1976, in accordance with article 49

Preamble

The States Parties to the Present Covenant

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, reorganization of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Recognizing that these rights derive from the inherent dignity of the human person.

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies where granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measure derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11,15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Part III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This Penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include;

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the Parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes of the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he

does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compiled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable

at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order *(ordre public)*, or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order *(ordre public)*, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order *(ordre public)*, the protection of public health or

morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee.) It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in the personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article

28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two-thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia, that*:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the member present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the

rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if, any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned with six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph, (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no

agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter.

This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

Part V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

Part VI

Article 48

1. The present Covenant is open for signature by any State member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or in-

strument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one-third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-third majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Appendix III

3. (i) International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966

ENTRY INTO FORCE: 3 January 1976, in accordance with article 27

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the idea of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles;

PART I

Article I

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their neutral wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group of person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of latter to form or join international trade union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after child birth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his fami-

ly, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. This States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian system in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. The further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all-racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts herefrom States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant

falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17 and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present

Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with including a Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one-third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the State Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-third majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendements come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under Article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures ratifications and accessions under article 26:

(b) The date entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

Appendix IV
United Nations Security Council Resolution 579 (1985)
18 December 1985

The Security Council

Deeply disturbed at the prevalence of incidents of hostage-taking and abduction, several of which are of protracted duration and have included loss of life.

Considering that the taking of hostages and abductions are offences of grave concern to the international community, having severe adverse consequences for the rights of the victims and for the promotion of friendly relations and co-operation among States.

Recalling the statement of 9 October 1985 by the President of the Security Council resolution condemning all acts of terrorism, including hostage-taking (S/17554),

Recalling also resolution 40/61 of 9 December 1985 of the General Assembly,

Bearing in mind the International Convention against the Taking of Hostages adopted on 17 December 1979, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons Including Diplomatic Agents adopted on 14 December 1973, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation adopted on 23 September 1971, the Convention for

the Suppression of Unlawful Seizure of Aircraft adopted on 16 December 1970, and other relevant conventions,

1. *Condemns unequivocally* all acts of hostage taking and abduction;

2. *Calls* for the immediate safe release of all hostages and abducted persons wherever and by whomever they are being held;

3. *Affirms* the obligation of all States in whose territory hostages or abducted persons are held urgently to take all appropriate measures to secure their safe release and to prevent the commission of acts of hostage taking and abduction in the future;

4. *Appeals* to all States that have not yet done so to consider the possibility of becoming parties to the International Convention against the Taking of Hostages adopted on 17 December 1979, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons Including Diplomatic Agents adopted on 14 December 1973, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation adopted on 23 September 1971, the Convention for the Suppression of Unlawful Seizure of Aircraft adopted on 16 December 1970, and other relevant conventions;

5. *Urges* the further development of international co-operation among States in devising and adopting effective measures which are in accordance with the rules of international law to facilitate the prevention, prosecution and punishment of all acts of hostage-taking and abduction as manifestations of international terrorism.

Appendix V
Resolution of United Nations General Assembly

Resolution 40/61

9 December 1985

The General Assembly

Recalling its resolutions 3034 (XXVII) of 18 December 1972, 31/102 of 15 December 1976, 32/47 of 16 December 1977, 34/145

of 17 December 1979, 36/109 of 10 December 1981 and 38/130 of 19 December 1983.

Recalling also the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. The Declaration on the Strengthening of International Security, the Definition of Aggression and relevant instruments on international humanitarian law applicable in armed conflict.

Further recalling the existing international conventions relating to various aspects of the problem of international terrorism, *inter alia,* the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, concluded at New York on 14 December 1973 and the International Convention against the Taking of Hostages, concluded at New York on 17 December 1979.

Deeply concerned about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings.

Taking note of the deep concern and condemnation of all acts of international terrorism expressed by the Security Council and the Secretary General.

Convinced of the importance of expanding and improving international cooperation among States, on a bilateral and multilateral basis, which will contribute to the elimination of acts of international terrorism and their underlying causes and to the prevention and elimination of this criminal scourge.

Reaffirming the principle of self-determination of peoples as enshrined in the Charter of the United Nations.

Reaffirming also the inalienable right to self-determination and independence of all peoples under colonial and racist regimes and other forms of alien domination, and upholding the legitimacy of their struggle, in particular the struggle of national liberation movements, in accordance with the purposes and principles of the Charter and of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States is in accordance with the Charter of the United Nations.

Mindful of the necessity of maintaining and safeguarding the basic rights of the individual in accordance with the relevant international human rights instruments and generally accepted international standards.

Convinced of the importance of the observance by States of their obligations under the relevant international conventions to ensure that appropriate law enforcement measures are taken in connection with the offences addressed in those conventions.

Expressing its concern that in recent years terrorism has taken on forms that have an increasingly deleterious effect on international relations, which may jeopardize the very territorial integrity and security of States.

Taking note of the report of the Secretary General (A/40/445 and Add. 1-2),

1. *Unequivocally condemns,* as criminal, all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security;

2. *Deeply deplores* the loss of innocent human lives which results from such acts of terrorism;

3. *Further deplores* the pernicious impact of acts if international terrorism on relations of cooperation among States, including co-operation for development;

4. *Appeals* to all States that have not yet done so to consider becoming party to the existing international conventions relating to various aspects of international terrorism;

5. *Invites* all States to take all appropriate measures at the national level with a view to the speedy and final elimination of the problem of international terrorism, such as the harmonization of domestic legislation with existing international conventions, the fulfilment of assumed international obligations, and the prevention of the preparation and organization in their respective territories of acts directed against other States;

6. *Calls upon* all States to fulfil their obligations under international law to refrain from organizing, instigating, assisting or participating in terrorist acts in other States, or acquiescing in activities within their territory directed towards the commission of such acts:

7. Urges all States not to allow any circumstances to obstruct the application of appropriate law enforcement measures provided for in the relevant conventions to which they are party to persons who commit acts of international terrorism covered by those conventions;

8. *Further urges* all States to co-operate with one another more closely, especially through the exchange of relevant information concerning the prevention and combating of terrorism, apprehension and prosecution or extradition of the perpetrators of such acts, the conclusion of special treaties and/or the incorporation appropriate bilateral treaties of special clauses, in particular regarding the extradition or prosecution of terrorists;

9. *Urges* all States, unilaterally and in cooperation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of the causes underlying international terrorism and to pay special attention to all situations, including, *inter alia,* colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security;

10. *Calls upon* all States to observe and implement the recommendations of the *Ad Hoc* Committee on International Terrorism contained in its report to the General Assembly at its thirty-fourth session.

11. *Calls upon* all States to take all appropriate measures as recommended by the International Civil Aviation Organization and as set forth in relevant international conventions to prevent terrorist attacks against civil aviation transport and other forms of public transport;

12. *Encourages* the International Civil Aviation Organization to continue its efforts aimed at promoting universal acceptance of and strict compliance with the international air security conventions;

13. *Requests* the International Maritime Organization to study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures ;

14. *Requests* the Secretary-General to follow up, as appropriate— the implementation of the present resolution and to submit a report to the General Assembly at its forty-second session.

15. *Decides* to include the item in the provisional agenda of its forty-second session.



Dr. M. K. Teng is a renowned Professor of Political Science. He headed the Deptt. of Political Science at the Kashmir University. A seasoned teacher and prolific writer, he has written many learned articles, published in professional journals of repute.

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